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# POLITICAL SCIENCE QUARTERLY

## THE UNITED STATES AND LATIN AMERICA

### *The Sins of the Fathers*

A POLITICAL dilemma bedevils the United States' dealings with Latin America. Whatever our policy, we are caught up in the imbalance that for a century has moved from tyranny to revolution and from popular upheaval to dictatorship. Because the governments are unstable any action on our part is suspected of abetting or opposing this or that party, this or that individual, among those who are engaged in the struggle for power. The presumption seems self-evident even if we are innocent of any intent. Our mere presence is an interference and the inoffensive activities of our representatives have political overtones. The American Ambassador in Haiti, Ecuador or Venezuela cannot give a luncheon or accept an invitation to dinner with any political figure either in or out of government without in fact strengthening or weakening this or that party, increasing the political prestige of this or that individual. Our mere presence is a stumbling block in the path of spontaneous political development. The outflow of American energy is so all embracing that even Fidel Castro's strenuous efforts to free himself from the potency of the United States will prove a futile gesture. Not even Russia can save Cuba from American influence.

Many things fall into their place as soon as we recognize this simple fact. It is natural for our southern neighbors to be anti-American, to be jealous of our power, envious of our wealth and to suffer from both frustration and inferiority at our mere presence. All of this is unfortunate but inevitable. So is the sensitivity, the indignation at every seeming injury, neglect or outright rejection. The turning to communism by some intellectuals is an escape from American imminence. It is an act of defiance, an acceptance of an alternate allegiance, a way out of the ever present shadow which is the United States by looking in another direction and believing that one can free oneself



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from reality by running away from it, by embracing a mirage. So it was with fascism and nazism. So it has been with the promises of any alternate prospect that would somehow shorten the reach of the United States, that would somehow cramp the tugging at their way of life, language, amusements and their social and personal standards. One could detail this in a thousand ways from the cocktail to baseball, from the American movie to the Cadillac, from frozen orange juice to nail polish, from Coca Cola to the office secretary, from the American advertisement on television to the lilting jazz played by the orchestra in the "best" restaurants. The Mexicans have invented a word for it—*pochismo,* the substitute of the foreign, especially the American, for local traditional Mexican or Spanish usage, belief or attitude.

The emotional outburst against the foreign influence, against "Pochismo," is not only Mexican, Cuban or Latin American. One need but think back upon the history of modern Ireland with its revival of Gaelic and its insistence upon a sovereignty, which enabled it to keep Dublin lit up while darkened London was being destroyed, to recognize that the Castro phenomenon is not entirely unique. And one can, if he accepts the emotional tang of nationalism, recognize that Castro in his attempt to Cubanize the Cuban people, to discover the inner essence of *the Cuban,* had to expatriate the foreigner, to drive out the English words in the Cuban Spanish, to eradicate the changed manners that have come with the tourist, the television, radio and the automobile, to destroy the newspapers filled by American columnists and American comic sheets, to expropriate the hotels, bars, electric light, factories, stores, farms, cattle and sugar owned by Americans; to cleanse Cuba of the sound, the laughter, the play of the American. The attempt is a species of insanity. It is bound to fail. That it should, however, be undertaken in a world fragmented by an increasing number of small nations filled with zeal for local purity and excellence and the cry of anti-imperialism and anti-colonialism is not strange at all.

We should not be surprised that many of our neighbors to the south find it difficult to adjust to the expanding influence of the United States. It seems impossible to make one's peace with this unfolding power except by accepting it and becoming 100% American, even more American than the Americans, or by turning to communism as an alternative way. What is sim-

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pler, however, is to continue in a state of resentment. It has the convenience of being ambivalent, it allows for flirtation with the American ways of being without fully accepting the Yankee ideas. The escape to communism is more difficult, less acceptable because, taken seriously, it requires a repudiation of the Catholic tradition, the ways of democracy and the concept of the rights of man. Escape by immersion in the American milieu is not unusual among the middle class and among some intellectuals. It is, however, a route strewn with thorns and it often ends in disillusionment.

Americans will not ordinarily accept the converts as equals and in personal relations often treat them with indifference and with the special coldness self-satisfied people are capable of. I have sometimes wondered why American writers trying to account for the resentful feeling in Latin America towards the United States failed to point to the most serious source of our difficulties—the treatment of Latin Americans as inferiors. The reason perhaps is simple and innocent. We are blind to our own ways. We are heirs to a tradition about the people of color, of darker skins, and it influences all of our attitudes, feelings, notions, habits, gestures, verbal expressions about people of color—any color. I can hear the protest of my readers, or even the vilification by those who would not have it brought up. But in this world of ours it is necessary that we face up to the fact that our treatment of the Negro is the single most serious obstacle to our rôle of leadership in a world of nations most of whom are "people of color." I remember one day in the University of Caracas in Venezuela. After I had delivered a lecture on American democracy, a perplexed young priest rose in the audience and asked: "In the light of what you have just told us, how do you explain the denial of justice to the Negro?" I might as well not have spoken.

This, however, is the lesser handicap. National policy can be remedied. New laws can be written and new interpretations by the courts can in time reshape the public image and give the government the reputation of fighting against evil rather than abetting it. But how do we reshape the attitude, feeling, gesture, tone and manner of a people raised in the belief that the colored peoples are inferior by nature and that the European and especially the American are superior? This way of saying it simplifies the issue for somehow it implies that this is a deliber-

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ate something that can be changed by talk and instruction. Unfortunately, it has become an ingrained manner we all carry with us, even those of us who would teach others tolerance, forbearance, and politeness. This is the price we are paying for slavery—the sins of the fathers are being visited on the children even unto the fourth generation.

How can we treat Latin Americans, especially those partly Indian or Negro, as we treat our next door neighbors? How do we keep all of our built-in mechanisms of resistance, defence and repulsion from coming to the surface when faced with colored people, when it has always been natural, right and proper to behave, talk, believe, act and be just the way we are, better and superior? This is the crux of the matter. How can we be different from what we are and how long will it take us to be changed? Our difficulties with Latin Americans are not merely economic or political. They are moral. We treat them as lesser people. We cannot really help ourselves and we cannot conceal it. Latin Americans sense it in every gesture and attitude. That is why the United States is resented and watched with an unhappy sense of inferiority. That is why the fury broke against Mr. Nixon. He was treated the way he was in Caracas to the shouting of Little Rock, Little Rock. He was not spit upon because we paid low prices for coffee, or because there was a decline in the petroleum market in the United States. Mr. Nixon provided the occasion for a release of rankling indignation and was victimized for our shortcomings.

### *Our Dalliance with Dictators*

One of our difficulties is the posture we have attained in the eyes of Latin Americans. To them we seem to stand in the way of social and political change. It is tragic that the nation which first repudiated colonialism and for generations stood almost everywhere as the beacon light for peoples seeking to free themselves from political oppression should in Latin America be looked upon as a friend of tyranny and a supporter of dictatorship. I actually overheard one Latin American saying to another: "Every time we overthrow a dictatorship we feel that we have won a victory against the United States." We slipped into this posture unwittingly and without recognizing the signposts along the way. Our people simply failed to note the policy

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implications of the fact that the democracy which we take for granted has not really had a parallel development among our southern neighbors.

The democratic constitutions in Latin America do not reflect the realities of their economic, social and political situation. In extreme cases like Santo Domingo and Cuba under Batista the constitutions were in the nature of a falsification, and in many others a pretension, if you will, an ideal to be realized in the future. The immediate was different. It was caste ridden, authoritarian, and in many areas so rigid that it had not changed perceptibly in a hundred years. "The Great Transformation" that passed over Europe and the United States as a result of the introduction of the machine and as a consequence of the incorporation of the masses into the political process left Latin America by the roadside. Latin American constitutions in fact falsified the realities. Governments were neither representative nor based on the consent of the people and the society was not democratic.

We accepted, at least in formal parlance, the pretense for the reality. In diplomatic discourse we were associated with the democratic nations of Latin America when in fact the nations were little changed from what they had been at the end of the colonial regime and the democratic movement had passed them by as the industrial revolution had. These are generalizations, but certainly in 1910 Latin America was little different from what it had been in 1810. Modernization of Latin America in a social and political sense began with the Mexican Revolution of 1910 and is now moving forward with increasing speed. Our assumption that we were dealing with democratic nations symbolized by representative constitutions was false, and our identification with the social and economic structure upon which they rested placed us in the difficult position of supporting a "feudal" system against the expanding influences that reflect the popular revolution following in the path of industrialization.

The democratic society we take for granted is just beginning to emerge in Latin America and we have not identified with it. Our government and private investors have, inevitably perhaps, associated with the groups being troubled, displaced or destroyed by changes we cannot stop, control or even guide. It is our misfortune to be identified with those who are endangered by the upheaval and to find ourselves opposing the reforms which

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would bring these nations closer to our own democratic society. In some way this is the major obstacle in the path of our formal dealings with Latin America. We have in recent years supported their governments on the assumption that they were our democratic allies. They were our allies, true enough, but they were not always democratic. And because they were our allies we were prepared to support them against the forces that would bring them closer to the democratic world for which we are the spokesman.

Our identification with the ruling families has made it difficult for us to recognize the legitimacy of the popular pressure for change. Our investments in Latin America are tied to the present order and would in some cases seem to be endangered by any broad program of social improvement and certainly by the threat of revolution. The dilemma is very real and difficult to resolve—for in theory, nay in a long religious and missionary tradition, we are committed to reform and improve not only ourselves but, if possible, our neighbors. What is the good neighbor policy, or Wilson's preachment for honest elections and democratic governments but an attempt to make effective in the real world now a sense of obligation that has its roots in religion. Roosevelt's Four Freedoms and Truman's Point Four are all part of the same preoccupation.

The perplexities are real and simple generalizations are misleading and sometimes false. We do not as a policy support dictatorships. It would run counter to every American tradition. In practice, however, we have been the friends of dictators as a lesser evil, or as the result of a *de facto* situation which in effect left us little choice. We have found ourselves on the same side of the fence with the dictators because they like ourselves were anti-communist.

### *Anti-communism*

This seemingly natural alliance between the democracy of the United States and the "strong" men of Latin America has proven a snare and a delusion. We drifted into the policy easily enough, only that we misunderstood our neighbors. We were opposed to communism, but Trujillo, Pérez Jiménez, Batista, Rojas Pinilla, Perón, and others were opposed to democracy. They were not worried about communism; in fact, Trujillo,

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Batista and Perón flirted with the Communists when it served their immediate interests. What they were really opposed to were the democrats, the people who wanted regular and honest elections, free speech, a free press, the right of petition, the right of public assembly, freedom from arbitrary arrest, freedom from torture, exile, persecution and the constant menace of sudden death at the hands of the dictator's henchmen. And we to our—what would be the right word?—bewilderment, confusion, perplexity, shame, found ourselves supporting governments violating the Bill of Rights and imposing on their citizens every evil and doing it in the name of the defence of the free world and in opposition to communism.

There is a great lesson in all of this. We were caught up in a situation which we misread. We divided the world between democrats and Communists, between the free and the totalitarian governments. But that proved too simple a classification. There were also dictators who like the totalitarians suppressed all vestiges of democracy, and did it in the name of anti-communism. And because they were or seemed to be anti-communists we called them democrats and welcomed them into the camp of the free nations. Worse than that, we were guilty of helping the dictators persecute leaders of the democratic elements in Latin America because we allowed ourselves the privilege of identifying the enemies of the local tyrants as our enemies as well. As example of this: we very reluctantly gave Betancourt, the actual president of Venezuela, a passport and threatened to deport one of the best friends of the United States, Germán Arciniegas, because Trujillo and Rojas Pinilla called him a Communist.

Our relations with Latin America and with other parts of the world have been muffed by our making anti-communism the central theme of our foreign policy. This gave us a forceful rôle in the world. It made it easy to rally individuals and nations to our banner. It simplified the task of identifying our enemies and separating the black sheep in our midst. American foreign policy could take on all of the characteristics of a great campaign, even of a moral crusade. That was all very good. Unfortunately, it suffered from a cardinal defect. The policy was a negative one. We were passionately against communism but not outspokenly for democracy. And because we had the posture of an opponent we welcomed as allies all those who enrolled

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under the same banner even if they rejected everything else we stood for. What had happened to us was that we took a negative ideological position. We were not only in opposition to communism but had a notion that all opponents of communism were also democratic like ourselves.

And because this is a period of rapid social change our doctrinaire opposition to communism tended to identify us with the supporters of the status quo. In Latin America every dictator proclaimed his anti-communism every time he took away the liberties of the people and, in the name of defending the free world, persecuted those who asked for constitutional guarantees. The identification of a fixed anti-communist ideology with tyranny became so clear in Latin America that professional anti-communists came to be looked upon as agents of tyranny.

How bitter and painful this situation became was illustrated one day when half a dozen Venezuelan newspaper men were talking about the United States' policy towards Pérez Jiménez, the dictator of their country whom we had decorated. They had all been in prison and half of them had been tortured. When they talked about our friendliness to and our decorating of Pérez Jiménez, it was with bitterness and suppressed anger. They spoke as if Pérez Jiménez was decorated just because they were imprisoned and physically abused. The gossip and rumor this kind of feeling generated spread quickly and widely among the people and provoked fear of and indignation against the United States. The combination of the resentment stirred by our self-confident superiority and the hostility that followed our "support" of the dictators goes a long way towards explaining the unhappy posture we have acquired in the eyes of the people of Latin America.

Our anti-communist policy would have stirred other feelings if it had been coupled with a positive support of democracy. If it had been clear that we were against communism but in favor of the democratic aspirations of the people in Latin America and in other parts of the world as well, our rôle would have been a different one. Unfortunately, however, we were opposed to communism but were not visibly supporting democracy. That is the difficulty of a negative position. The justification of our negative position was often stated on the grounds of "non-intervention" which, in turn, is another negative attitude. This argument was often offered with tongue in cheek

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not only because, as we have seen at the beginning of this article, our mere presence and our every gesture is an intervention but because our active anti-communist policy was in many ways a source of intervention on behalf of the status quo even if that was not our intent.

It has been easy for critics of the United States to describe these policies as evidence of hypocrisy, pretence, and deliberate choice. It has been easy to accuse the Department of State of supporting or, if you prefer, suffering dictators in the name of anti-communism because these "strong" men also favored American business. Nor would it be completely honest to argue that this element did not have its place in the total situation. Certainly, it would be unrealistic to say that American business did not present the point to the policy makers, did not offer the brighter view of the dictators because they favored American investments. Nor can we assume that the policy makers were completely uninfluenced by the favorable attitude taken by American business men toward, say, Batista or Pérez Jiménez.

Latin Americans at least believed that the United Fruit Company dictated the policy of the State Department during the Arbenz difficulties. It would, however, be the grossest of libels to repeat this overly simple if not malicious explanation of our policy either towards Guatemala or towards Latin America. This explanation if it were true would in some way be fortunate, for it would be relatively easy to correct. The difficulty is of another order. It is that our commitment to non-intervention made it easy for American business men to urge friendly relations with the dictatorial governments. To some degree this also influenced our representatives. What was originally evolved as a doctrine to restrain the United States from intervening in the affairs of our neighbors had became a justification for friendly tolerance of such dictators as Batista, Pérez Jiménez and Rojas Pinilla. It made it easier for our representatives to remain on good terms with the tyrants though they knew of the horrors being committed by the local police. Our purely negative policy eased us into being friendly to the dictatorships whereas we should have been actively supporting the democracies as the only means of opposing communism. The only way of increasing the influence and viability of the democracies is by encouraging them.

We should during the crucial years of our anti-communist

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campaign have had a positive position on behalf of democracy. We should have repeatedly asserted our support of democratic ideals and governments by statements from the President, the Secretary of State, declarations of policy from the Congress. It should have been clear and known that the democrats or the democratic governments would be aided by government loans, diplomatic support, that banks and foundations would be encouraged to coöperate with these governments and it should have been equally well known that we would oppose, isolate, discriminate against governments that were dictatorial. It should have been our policy to protect the democratic leaders driven from their homes by the dictators, and our ambassadors, members of Congress and the State Department itself should have protested publicly when the government of Rojas Pinilla tried to close down *El Tiempo,* the great liberal paper in Bogota, or when the house of former President Alfonso Lopez of Colombia was burned down. An active support of the democratic elements would have strengthened them and would have increased the influence and viability of the democratic process. With all of the shortcomings and difficulties general rules present for policy makers in Latin America, it is always possible to distinguish a Trujillo in Santo Domingo from a Lleras Camargo in Colombia and to shape a policy in opposition to one and support of the other. I recognize the complexities of carrying on the business of the nation in a world divided by the cold war. Had we had a positive policy in support of democracy, then Castro would not have played his present rôle. Even in Cuba there was a real difference between Prio Socarros and Batista. The first, in spite of all the corruption, had come to office by an election and would at the end of his term leave it by the election of a successor. Batista denied the electoral process by a military coup. Had we taken our stand then as we should have, our difficulties in Cuba would have been of a different order. We would not have been identified with tyranny nor accused of supporting the status quo.

### *The Status Quo*

And the status quo in Latin America belongs to another age. It does not pertain to the twentieth century. It is certainly not something that can be deliberately upheld by a nation like the

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United States where change and mobility are perhaps the most conspicuous elements in our culture. The status quo in Latin America is anti-democratic and incompatible with our anti-communist campaign. The Latin American society which has seemed petrified these many centuries has suddenly become explosive, among other reasons because of the sudden increase in population. This stratified social and economic society cannot make room for the increasing numbers who are seeking a means of livelihood. It has no built-in mechanism for change and its authoritarian bias makes social mobility well nigh impossible. It could have survived indefinitely if the modern world in the shape of science and communication had not come threatening the very basis upon which it rests. The restlessness and the pressure for change in Latin America are not due to communist influence primarily. If responsibility has to be assigned to outside forces it is rather the outpouring of American energy that has made the old ways no longer tenable.

We stir up restlessness by our mere presence, by our innate egalitarianism, by our backslapping, good fellow attitudes, by treating everyone we meet the same way, by having none of the attributes associated with a stratified social structure, by really not recognizing the difference between a "big" man and a "little" man. We also build up pressure for change by our incredible emphasis upon consumers' goods through every medium available to us. We announce to the world that everyone ought to have an automobile, a television set, the best of furniture and modern plumbing and ten thousand other things as well. We do our best to stir the appetite for the ease, comfort, luxury and material possessions which are unattainable by the mass of the people in Latin America without a profound change. At the same time, we help the present governments sit on the lid, and when the explosion occurs we blame it upon the Communists, who take the credit for being the "friends" of the people. The present situation was graphically described by a French anthropologist when he took a good look at the present hacienda system in Peru: "Not since the thirteenth century has anything like this existed in France or in Western Europe." The serfdom in which people are sold with the land is not only a Peruvian institution. In Ecuador, for instance, at least four hundred thousand Indians are attached to haciendas as *Huasipungueros* under a system which keeps them tied to the land. This is the type of reality

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which makes it easy for dictators and difficult for "democracies."

Our sympathetic attitude towards Latin American dictators has made the prospects of peaceful change more difficult, for we have contributed to the disillusionment with democracy of many of the younger generation. They have seen repeated efforts to use the "democratic" process to bring needed economic and social change frustrated by violence and dictatorship and have noted our complacency if not our approval of these dictators and their methods. Is it any wonder if many of them have come to the conclusion that the United States does not believe in democracy for Latin Americans as if it were something they were not fit for. And is it any wonder that they have turned to violence and authoritarian leadership as the means, perhaps the only means, of breaking through to the twentieth century from the position they now occupy in the world? We would, I am certain, like to deny this accusation. We would like to say that if there is a modern generation of Jacobins in Latin America they have learned their lessons from others, from the Communists. But many of them are not Communists. They have merely lost faith in the democratic process, they do not believe it works under the conditions of poverty, illiteracy and social rigidity which are characteristic of their part of the world. And we are, perhaps more than we will acknowledge or even be accused of, responsible for turning many of this generation away from a belief in democratic ideals and methods. If we had denounced Batista for overthrowing an elected government and offered to help its re-establishment, there would in all probability never have been a Castro. If we had taken a similar stand in Venezuela, in Peru and in Colombia, then our battle against communism would have been more effective and we would not have been accused of promoting dictatorships in defence of the United Fruit Company and more important, we would have strengthened the belief in, and the practice of, democracy in Latin America.

The transformation taking place in these countries we cannot stop. We are, in fact, more responsible for setting it in motion than anyone else and we cannot help continuing the agitation and making the "hunger" almost unbearable. For we cannot as a culture and as individuals cease being ourselves or change the influence we have. We will either help the Latin American governments work their way out of serfdom and poverty to the modern, essentially American, twentieth century or be forced

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to accept the alternative of convulsive revolutions in which we will be described as the evil-minded shylocks who stand in the way of "progress" and in the path of the legitimate aspirations of the common people.

This is clearly seen in our position towards Cuba. So far as most Latin Americans are concerned—I am not speaking about their governments, for they often speak with tongue in cheek—they sympathize with Castro and certainly with the anti-dictatorial revolution he stood for, and we cannot say an effective word about the matter because we have tolerated and, until recently, supported Trujillo in Santo Domingo. After all, Trujillo's government is one of the worst in the modern world. And yet, this government has been one of our allies in defence of western "democracy." Our case against Castro would be much more convincing if we had denounced Trujillo long since. We have now condemned him, but Latin Americans say that the only reason we agreed to condemn him was to set a precedent for an attack on Castro. It is hard to live by a double standard and expect to be honored.

The anti-communist campaign in Latin America has proved a poor investment for the United States. The Walter-McCarran Act as applied to visas for entry to and passage through the United States has made us more enemies in Latin America than almost any other single official policy and it has made enemies for us of those who were naturally our friends. The State Department must have thousands of complaints in its files from American ambassadors and consular officers and from private citizens about the harm the enforcement of these provisions has done to the good name of the United States. But so rigid, so over-committed has our attitude been, and so sensitive has American opinion been upon the issue of communism that any folly which could be classed as anti-communist could become what journalists like to call a "sacred cow," something that could not be critically mentioned. And this is what happened to the Walter-McCarran Act. To this perhaps one could add that political intimidation, the fear of being described as "soft on communism," has kept many people who know how damaging the enforcement of these provisions are from criticizing them in public. I shall confine myself to two instances.

In Venezuela, one time, when I was delivering some lectures it dawned on me that the feeling of friendliness towards the

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United States and even towards me as an American had chilled to the freezing point. No one would talk about what had produced this marked drop in temperature. After digging around among my friends, I came upon the explanation. It was very simple. A highly distinguished member of the small group of families who make up the intellectual and political élite, a well-known Catholic, a prolific writer, who published innumerable columns in defense of the United States, a former Secretary of Foreign Affairs, had been refused a transit visa by an American consular official. He was not going to the United States. He was on his way to France to attend some international conference and he merely wanted to change planes in the United States. But no. The young consular official was sorry. There would have to be an investigation. It was on record that years ago when Venezuela recognized the U.S.S.R., he was known to have attended a reception at the Russian Embassy. Yes, but didn't the Consul know that the United States had urged the Venezuelan government to recognize Russia and didn't he know that the applicant was once Secretary of Foreign Affairs and a friend of the United States? Yes, he knew. But the law. The law made it mandatory. There would have to be an investigation, special instructions would have to be received. The thing could not be done in less than three months and there was no assurance, of course, that a transit visa would be available at the end of that time.

The former Secretary of Foreign Affairs walked out and slammed the door. He became one of the bitterest enemies of the United States. He continued to write good articles about the United States, but they were no longer friendly and favorable. And what happened to him affected all of his friends and relatives, and these included through intermarriage most of the important people in Caracas and most of our good friends. There were enough cases of this sort to have justified the establishment of a special airline that goes from Mexico City to Canada without stopping in the United States so that Latin Americans going to Europe would not have to submit to the humiliating experience of trying to get a transit visa from us while on their way. When I once asked the editor of the leading literary journal in Latin America why he did not call me when he went through New York on his way to Europe, he replied, "I go to Europe via Canada. You think I would let

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myself be insulted for the sake of getting an American transit visa?" And we continue to wonder why we are unpopular in Latin America. As one Peruvian friend once remarked: "Our troubles with the United States are sometimes over foolish matters."

The other incident which occurred just recently and which was related in a general conversation by someone whose name I do not recall but who was involved in the matter is as follows. Through the good offices of the American Embassy the five students who were elected by their fellows of the Politecnica as the most worthy (or those who were chosen as the best athletes, I am not clear about this) would get a special trip to the United States. The prospect of such an unusual adventure stirred great enthusiasm among the students and good feeling towards the United States. There were parades, meetings, elections, and speeches. Finally, the five lucky winners of the proposed trip to the United States were announced. The date was set, the bus in which they were going was hired. The students had prepared a special send-off to the lucky ones and the United States was the most beloved of all the nations among the students of the Politecnia. Then at the very last moment the consular officer came up with the sad story that the most popular of the five students, the leader of the group, and the most beloved in the school had as a child of twelve been a member of a forbidden society. He could not under the law be given a visa to visit the United States.

It was perfectly clear to every one involved that if it was announced that the leader of the chosen group would not be permitted to visit the United States the other students would refuse to go. The students in the Politecnica, and there are 30,000 of them, would believe that the school had been insulted, it would be pointed to as a sign of American duplicity and disregard of the good name of their school and of Mexico itself. It was perfectly clear that the enthusiasm of the students would turn to gall, anger and emotional outbursts. The students would surely march on the Embassy, there would be riots, there might even be serious violence. The matter would be taken up by politicians and the press. What was meant to be a gesture of friendship would in all likelihood turn into a major public scandal embarrassing our good relations with Mexico. At the last moment, when the news could no longer be withheld some-

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one offered the suggestion that this was a case of mistaken identity, that the child of twelve who had belonged to a forbidden organization was really another child of similar name and age. Thus the situation was saved.

### *The Support of Democracy*

If the notion of mistaken identity had not been brought up, the resulting ill repute and ill will would have undone whatever good will might have followed an entire year of Point Four expenditures. Clearly, the good intent of the Walter-McCarran provision has worked to make the conduct of our foreign relations more difficult and to destroy much of the good will and friendliness resulting from the aid programs for which Congress appropriates large sums of money.

Our relations with Latin America, if one is to call things by their right name, are calamitous. If that is the wrong adjective, how do you describe the public abuse heaped upon the Vice President of the United States? Just how much lower can a great nation fall in the esteem of its neighbors and allies? I am aware of all the extenuating circumstances—Communists, and so on. These are not explanations. Those who argue this way are trying to avoid facing the facts and seeking to clear their own conscience by throwing the blame on others. If we are unpopular, let's accept the facts for what they are and seek to understand how it is possible that we of all people, we who have gone across the ocean twice to make the world "safe for democracy" and to establish the "four freedoms," should end up this way.

We have arrived at this juncture in Latin America by pursuing a purely negative anti-communist policy and by accepting the dictators and tyrants as our allies and supporting them when in the name of anti-communism they harassed, imprisoned and, in many cases, killed the people who were trying to work for the simple democratic privileges we take for granted. There are many other things in the picture, but so far as the populace is concerned, we have identified ourselves with their oppressors.

If any one thing is certain, the surest way for us to regain the good will of the people is to make it clear that we are for democracy. We ought to say that we will support a leader like Lleras Camargo and oppose one like Trujillo, and we ought to do it.

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The difficulties in the path of what seems a very simple policy are numerous, but it is always possible to recognize the difference between a government that is moving in the democratic direction and one that is going away from it. The first we ought to support in every way we can, the second we ought to do our best to isolate diplomatically and economically and make it increasingly difficult for a dictatorship to survive. If we are the leader of the democratic world then let the people know it. They are not easily fooled. If we want to lead the democracies, then the people have to recognize the leader in us. No one ought to be so puzzled as was the political leader of one of the Latin American nations, who asked "What is American Foreign Policy?" The question is difficult to answer. But surely we ought to be able to say that we are against dictatorship—at least, in the Western Hemisphere. And this was not clear during the recent administrations.

There are, of course, many other reasons for our loss of face among our southern neighbors. One of them certainly is the failure of communication between us. Latin Americans continue to remember the "big stick" of Theodore Roosevelt and the many interventions in the Caribbean and Central America. They continue describing the United States as a nation of big trusts that control its government, they continue to describe us as a "capitalistic" nation where individualism is rampant, where there is no social conscience, where labor has no rights and where "materialism" has crowded all humanistic and cultural influences off the stage. That a few of the more educated and sophisticated people know better does not really affect the image of the United States among the people in general. Unfortunately, Latin Americans have not sensed the profound social revolution that has passed over the United States since the twenties. They have no understanding of our egalitarian society which has also been able to preserve its civil liberties, of the fact that we have developed a broad system of economic security and retained our political freedom at the same time. They have not learned of the federal and state policies that seek to defend individuals against the inherent indifference of large organizations.

But the fault is not entirely theirs. In some sense our people have not learned to talk about the new society they have created for themselves. Our language has not caught up with our revolu-

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tion and both the "radicals" and the "conservatives" use words and ideas when talking about the United States as if nothing had really happened, as if we were still living in the nineteenth century. It is, therefore, no wonder that our leaders when they talk to Latin Americans seem to describe the United States in the language of Adam Smith and Ricardo. To the Latin Americans we are made to stand for an absolute individualism and a freely competitive system as if there were no social security, no unemployment insurance, no Security Exchange Commission, no bank insurance, no Farm Security Administration, no collective bargaining and no powerful trade union movement. If we project a false image of ourselves, the intellectuals among our southern neighbors do the same. They want us to believe in an idealized Latin America; a world of equal men dominated by a humanistic culture. The intellectuals are seemingly unaware of the Hacienda system where men are still sold with the land, of the great separation between the rich and the poor, of the inadequate system of taxation, of the poverty, the illiteracy, and essential indifference and sometimes corruption of the governing cliques. Clearly both images are false and neither side really knows how to present itself as it really is. It may just be that human beings are caught up in language and image systems that falsify the reality.

It would not do to leave this matter here, for there is a real failure of communication between North and South America and not solely because each has a false image of the other. In some way we have and the Latin Americans have not missed the meaning of the passions that stir the present generation: In a very real sense we are removed from the issues and fail to appreciate how deeply people feel such questions as nationalism and colonialism, for instance, in many parts of the world. The people of many nations are striving for economic well-being, for schooling for their children, for sufficient food, for adequate medical care, for human dignity, but especially for national sovereignty and freedom from domination by outsiders. For us these issues are no longer real; except for the argument over segregation, our preoccupations are of a different order. We are concerned with questions of the cold war, of national security, productivity and employment, crowding of the highways by automobiles, the conquest of space, the overcrowding of our colleges and universities, the agricultural surpluses, and the

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amounts we can give towards the development of pre-industrial areas without placing an undue strain upon the American dollar. These are very different preoccupations and lead to dissimilar language systems. In a real sense the United States and the non-industrial areas including Latin America live in separate worlds and the matters of most concern to one lie beyond the area of basic preoccupation of the other. It is not that we do not understand each other. The discourse is carried on at different levels and we do not in fact talk to each other. Problems of space exploration, ballistic missiles, issues of conflict between the United States and the Russians or the degree of unemployment and dislocation that may result from automation are beyond the ken of the people in Haiti and Ecuador.

It is natural and easy to give a moral twist to the discussion of these different preoccupations by the people in the United States and Latin America. It is easy to say that we or they are at fault. In fact, parts of this essay sound just that way. We are at fault because we ought to know better. We should be capable of carrying a national discourse on two levels—those of a highly organized industrial and of a simple agricultural society that is striving for national independence and economic well being at the same time. We should sense the passions and be responsive to the clamor of anti-imperialism, anti-colonialism. We should understand the striving for economic independence, for industrialization, and we should sympathize with the efforts to protect and manifest a national culture. This is not always the case. What seems most passionately held and most insistently defended may appear exotic and irrelevant to us. The emotional tone with which such questions as industrialization, the export of raw materials, and foreign investments are discussed, sounds unreal to us. As a nation we have long since stopped arguing about the right or wrong of these matters and are baffled when they are fought over.

The industrial society and the complex issues it generates have for the United States obscured the meaning of the excitement now evident among Latin American nations. The discourse between them is being carried on at two different levels. This is the real difficulty of the relationship. We do not really understand and therefore do not sympathize with the emotional quality these questions are endowed with. They come out of a world we no longer understand. The issues posed frequently

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seem to lack reality. Our insensitivity (if that is the right word) places us at a great disadvantage. Popular restlessness manifests itself not only in a demand for sovereignty and independence but for freedom, welfare, and education. The increase in communications has made these demands more exigent. If our claims to leadership are to be sustained we must find means of identifying ourselves with the present clamor for values we have long since achieved.

Stated simply, the task we face in Latin America can be put in a single question. What can the United States do to help bridge the gap that lies between the $2,500 average annual income in North America and the $200 average annual income in Latin America? I am not sure that I know what these figures mean. But they are official findings of American government and United Nations agencies. Whatever they mean, the difference in income is so wide that, until it is narrowed, we cannot expect the people of those countries to identify with our aspirations, projects or policies. We are not really in the same boat despite all of our preachment, despite the joint activities of the Organization of American States and despite our mutual anti-communist campaigns. We cannot expect the poor in Haiti, the Indians in Peru, or the Roto in Chile to understand American policy or to associate with American ideals of either economics or politics. The governments of Latin America give lip service or honestly try to identify with the United States, but in either case the governing families are as far away from their own people as we are. And that merely complicates the problem. I am not arguing that the change in economic well being is the important issue. What I am saying is that the effort to move from an average annual income of $200 towards the average annual income of over $2,000 in the United States would generate so many activities, interests, conflicts, and so affect the popular view of the world that the Latin Americans would be in a better position to understand and share our outlook upon life and our political ideals.

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# THE FOUNDING FATHERS

## YOUNG MEN OF THE REVOLUTION

THE intelligent American of today may know a great deal about his history, but the chances are that he feels none too secure about the Founding Fathers and the framing and ratification of the Federal Constitution. He is no longer certain what the "enlightened" version of that story is, or even whether there is one. This is because, in the century and three quarters since the Constitution was written, our best thinking on that subject has gone through two dramatically different phases and is at this moment about to enter a third.

Americans in the nineteenth century, whenever they reviewed the events of the founding, made reference to an Olympian gathering of wise and virtuous men who stood splendidly above all faction, ignored petty self-interest, and concerned themselves only with the freedom and well-being of their fellow-countrymen. This attitude toward the Fathers has actually never died out; it still tends to prevail in American history curricula right up through most of the secondary schools. But bright young people arriving at college have been regularly discovering, for nearly the last fifty years, that in the innermost circle this was regarded as an old-fashioned, immensely oversimplified, and rather dewy-eyed view of the Founding Fathers and their work. Ever since J. Allen Smith and Charles Beard wrote in the early years of the twentieth century, the "educated" picture of the Fathers has been that of a group not of disinterested patriots but of hard-fisted conservatives who were looking out for their own interests and those of their class. According to this worldlier view, the document which they wrote—and in which they embodied these interests—was hardly intended as a thrust toward popular and democratic government. On the contrary, its centralizing tendencies all reflected the Fathers' distrust of the local and popular rule which had been too little restrained under the Articles of Confederation. The authors of the Constitution represented the privileged part of society. Naturally, then, their desire for a strong central government was, among other things, an effort to achieve solid national guarantees for the rights of property—rights not adequately protected under the Articles—and to obtain for the propertied class (their own) a favored position under the new government.

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This "revisionist" point of view—that of the Founding Fathers as self-interested conservatives—has had immeasurable influence in the upper reaches of American historical thought. Much of what at first seemed audacious to the point of lèse majesté came ultimately to be taken as commonplace. The Tory-like, almost backward-turning quality which this approach has imparted to the picture of constitution-making even renders it plausible to think of the Philadelphia Convention of 1787 as a counter-revolutionary conspiracy, which is just the way a number of writers have actually described it. That is, since the Articles of Confederation were the product of the Revolution, to overthrow the Articles was—at least symbolically—to repudiate the Revolution. The Declaration of Independence and the Constitution represented two very different, and in some ways opposing, sets of aspirations; and (so the reasoning goes) the Philadelphia Convention was thus a significant turning-away from, rather than an adherence to, the spirit of the Declaration.

In very recent years, however, a whole new cycle of writing and thinking and research has been under way; the revisionists of the previous generation are themselves being revised. The economic ideas of the late Professor Beard, which dominated this field for so long, have been partially if not wholly discredited. And yet many of the old impressions, intermingled with still older ones, persist. Much of the new work, moreover, though excellent and systematic, is still in progress. Consequently the entire subject of the Constitution and its creation has become a little murky; new notions having the clarity and assuredness of the old have not as yet fully emerged; and meanwhile one is not altogether certain what to think.

Before the significance of all this new work can be justly assessed, and before consistent themes in it may be identified with any assurance, an effort should be made to retrace somewhat the psychology of previous conceptions. At the same time, it should be recognized that any amount of fresh writing on this subject will continue to lack something until it can present us with a clear new symbolic image of the Fathers themselves. The importance of this point lies in the function that symbols have for organizing the historical imagination, and the old ones are a little tired. The "father" image is well and good, and so also in certain respects is the "conservative" one. But we may suppose that these men saw themselves at the time as playing other

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rôles too, rôles that did not partake so much of retrospection, age, and restraint as those which would come to be assigned to them in after years. The Republic is now very old, as republics go, yet it *was* young once, and so were its founders. With youth goes energy, and the "energy" principle may be more suggestive now, in reviewing the experience of the founding, than the principle of paternal conservatism.

## I

Charles A. Beard, who in 1913 published *An Economic Interpretation of the Constitution of the United States,* did more than any single figure to make of the Constitution something other than a topic for ceremonial praise. By calling it a product of economic forces, Beard established an alternative position and enabled the entire subject to become one for serious historical debate. He thus created the first real dialectic on the Constitution and Founding Fathers, and for that reason Beard's work must still be taken as the point of departure for any historical treatment of that subject.

For Beard, the reality behind the movement for a constitution in the 1780's was economic interest. The animating surge came from holders of depreciated Continental securities who were demanding that their bonds be paid at par, and from conservative elements throughout the Confederation who wanted a national bulwark against agrarian-debtor radicalism. Beard thus identified the Federalists as those who wanted protection for property, especially personal property. The Anti-Federalists, on the other hand, were the great mass of agrarian debtors agitating for schemes of confiscation and paper money inflation in the state legislatures. Their hard-earned taxes would go to support any new bonds that a stronger United States government might issue; conversely, further fiscal experimentation on their part would be checked by national power. The Anti-Federalists, those who opposed a new constitution, were therefore the radicals; the Federalists, who favored it, were the conservatives.

Beard's argument was immediately challenged and kept on being challenged, which helped it to retain the fresh attractiveness of an avant-garde position for many years. But the man's influence grew, and his work played a vital part in historical

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thinking until well after the Second World War. Historical thinking, however, has its own historical setting. Why should such a statement as Beard's not have been made until the twentieth century, more than 125 years after the event?

In the nineteenth century the American Constitution had operated as the central myth of an entire political culture. While that culture was still in the tentative stages of its growth, still subject to all manner of unforeseen menaces, and with very little that was nationally sacred, there reigned everywhere the tacit understanding that here was the one unifying abstraction, the one symbol that might command all loyalties and survive all strife. The Constitution thus served multiple functions for a society that lacked tradition, folk-memory, a sovereign, and a body of legend. The need to keep the symbol inviolate seems to have been felt more instinctively during its earlier history than later on. Public controversy of the bitterest kind might occur over the charter's true meaning; enemies might accuse each other of misconstruing the document; but one did not challenge the myth itself. Americans even fought a civil war with both sides claiming to be the true upholders of the Constitution. Thus it was natural that when the historians of the nineteenth century—Bancroft, Hildreth, Frothingham, Fiske, McMaster—came to describe the origins of the Constitution, they should reach for the non-controversial idiom and imagery of a Golden Age. The Supreme Law had been fashioned and given to the people by a race of classic heroes.[1]

America's veneration for its Constitution became steadily more intense in the years that followed the Civil War. Now it was the symbol not only of the Union, for which that generation had made such heavy sacrifices, but also of the unfettered capitalism which was turning the United States into one of the richest and most powerful nations in the world. The new material order—wasteful, disorderly, already acquainted with

[1] Richard B. Morris has pointed out that in Henry Dawson there was at least one exception to this universal veneration for the Constitution. Dawson in 1871 published an article wherein he deplored the ancestor-worship which already wreathed the Fathers and their work. See Morris, "The Confederation and the American Historian," *William and Mary Quarterly*, XIII, 3rd ser. (April 1956), pp. 139-56; Dawson, "The Motley Letter," *Historical Magazine*, IX, 2nd ser. (March 1871), pp. 157 *et seq.*

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labor disturbances, yet immensely productive—was watched over by the benevolent and solicitous eye of the Constitution.

In 1888, in a setting darkened by portents of industrial warfare, John Fiske published *The Critical Period of American History,* an account of the events leading to the Philadelphia Convention of 1787. It was an instant success; the notion of the Confederation interlude as a "critical period" was dramatically perfect. A time of trouble, political drift, threatening disunity, and irresponsible agitation provided the occasion at Philadelphia for a supreme act of disinterested statesmanship. There, an intrepid conclave of Old Romans rose above personal and local concerns and presented their countrymen with an instrument of vigorous and effective government.

By the opening of the twentieth century, the state of mind in which men could uncritically ascribe a sort of immaculateness to their political and legal arrangements had altered sharply. By then a profound economic and social crisis had been met and overcome, but with remnants of psychological crisis left unresolved in its wake. The ending of the depression and hard times of the 1890's, the defeat of Populism and Bryanism, the election of McKinley and return of Republican rule—these things were not enough to restore the old complacent innocence. The American public, now full of guilty misgivings, had begun to ask itself searching questions about the evils of the existing order and about the price it had allowed itself to pay for material progress. The answer which was hit upon by publicists and civic spokesmen was *vested interest.* The formula was not exactly new, but after the experience of the 1890's, when public rhetoric had abounded in sinister allusions to "Wall Street" and "the monopolies," it was no more than natural that the "vested interest" concept should have taken on an immensely new and widened range of application. The "interests" were the shadowy powers that manipulated things and made them run the way they did. Thus vested interest came to be seen in the Progressive Era—those years roughly from the turn of the century through the First World War—as the ultimate reality behind the life of affairs.

It was in that era, moreover, that "reality" itself first came to be a synonym for all the equivocal, seamy, and downright evil facts of life from which innocent and respectable people are normally sheltered. Few periods in American history have been

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so strikingly noted for civic awareness and the reforming spirit—and reform meant getting to the bottom of things. The most efficacious step in exorcising an evil was exposing it. Thus the literature of exposure, which claimed an enormous amount of journalistic and literary energy, did much to whet and sustain that generation's relish for reform. "Muckraking" meant dredging up heaps of grubby "reality" for all to behold. "Reality," as Richard Hofstadter has said,

> was the bribe, the rebate, the bought franchise, the sale of adulterated food. It was what one found in *The Jungle, The Octopus, Wealth against Commonwealth,* or *The Shame of the Cities.* . . . Reality was a series of unspeakable plots, personal iniquities, moral failures, which, in their totality, had come to govern American society. . . .

The sheer excitement of discovery tended to leave people's perceptions of appearance and reality somewhat unbalanced. It is perhaps too much to say that anything hidden was taken as bad (though there were certainly strong presumptions); yet one of the great unspoken dogmas of American thought, implanted in this period, was that the "facts of life" had to be hidden in order to qualify as "real."

In academic precincts, meanwhile, such thinkers as Roscoe Pound, John Dewey, Thorstein Veblen, Arthur Bentley, and J. Allen Smith had begun to challenge the older static and formalist theories of law, philosophy, economics, and government. They were no longer so interested in the formal outlines which enclosed, say, government or the law; they were much more concerned to locate the dynamic forces inside these realms—to identify the powers that made them really work. Thus "economic interest" as a kind of *élan vital,* a basic prime mover, came to be given greater and greater emphasis. "Wherever we turn, wrote E. R. A. Seligman as early as 1902, ". . . we are confronted by the overwhelming importance attached by the younger and abler scholars to the economic factor in political and social progress." Here was "reality" being given an intellectual and scholarly sanction.

In view of this mounting preoccupation with "interests," one might be led to conclude that significant numbers of intelligent people were approaching a "class" theory of society not unlike that of Marx—a theory in which classes and class interests contended more or less frankly with each other for advantage. Yet by and large this did not happen; these were not the terms in

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which most people thought about society. For one reason, there was very little evidence to support such a theory. But a more important reason was that, to a people saturated in democratic prejudices, "class" habits of thought were fantastically difficult to understand, let alone imitate. To the Progressive mind, the way vested interest worked was not so much through class as through *conspiracy*.

Vested interest and conspiracy were concepts so closely related that they were almost synonymous. The interests worked in secret; their power rested on stealthy understandings and was exercised through the pulling of invisible strings. Hidden from view, they might freely circumvent the law and gain their ends by corrupting and manipulating the agencies of government. The Marxian view that a man openly and automatically reflected the interests of his class, doing this even in the name of ideals and justice, was incomprehensible to most Americans. The mediating term between economic interest and political action had to be something both simpler and more disreputable, and the techniques such as could not bear daylight. One important source of this attitude was the Progressive faith in the essential honesty of the people. Only the few, acting in secret, would set their interests against those of the nation. They achieved their aims not by consulting the majority will but by thwarting and evading it. Thus when writers of the Progressive period tried to weigh the importance of economic factors in any political development, the imagery they slipped into was almost invariably that of a conspiracy against the people. Such a mode of conceiving reality would even be brought to bear upon the origins of the United States Constitution.

Two of Charles Beard's immediate precursors in that realm were J. Allen Smith and Algie Simons. They were, for their own purposes, innovators; yet in a broader sense their minds followed a typical Progressive pattern. In J. Allen Smith's *Spirit of American Government, A Study of the Constitution* (1907), the myth of the Philadelphia convention as a forum of distinterested statesmen came under sharp attack. Claiming that "it was the property-owning class that framed and secured the adoption of the Constitution," Smith seemed to be feeling his way toward an economic interpretation based on class. But this tentative theme was quickly overshadowed by the central idea, that of a conspiracy against democratic rule:

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> Democracy . . . was not the object which the framers of the American Constitution had in view, but the very thing they wished to avoid. . . . Accordingly the efforts of the Constitutional Convention were directed to the task of devising a system of government which was just popular enough not to excite popular opposition and which at the same time gave the people as little as possible of the substance of political power.

Algie Simons, who was a convinced socialist and should therefore have hewed more consistently to the doctrine of class interest, fell into much the same sort of reasoning. In *Social Forces in American History* (1912), Simons' words seemed at first full of cool detachment when he said that it was not necessarily bad for the Constitutional Convention to have been virtually a committee of the propertied class, because that class "represented progress." But the lures of "conspiracy" in the end proved too much for him. Simons' closing rhetoric almost sweats with rural superstition as he tells his readers that

> the organic law of this nation was formulated in secret session by a body called into existence through a conspiratory trick, and was forced upon a disfranchised people by means of dishonest apportionment in order that the interests of a small body of wealthy rulers might be served.

But it was Charles A. Beard, taking up the "class interest" formula in his famous *Economic Interpretation* the following year, who succeeded to all intents and purposes in making it stick. Whereas neither Smith nor Simons had made any secret of their reforming passions (they denied that the Constitution was a sacred document, so their fellow-citizens should feel free to change it if they wished), Beard disclaimed any intention of writing a political tract. He would simply be the observer of historical events, impassively examining the facts. All he wanted to do was discover whether in fact economic forces had played a significant part in the drafting and ratification of the Constitution. Early in his book Beard insisted that it was not his purpose "to show that the Constitution was made for the personal benefit of the members of the Convention," but merely to determine whether the Fathers represented "distinct groups whose economic interests they understood and felt in concrete, definite form, through their own personal experience with identical property rights. . . ." Then, setting in motion an impressive system of scholarly apparatus, he proceeded to answer his own questions.

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Beard's ostensible argument—that the Fathers were pursuing class rather than personal interests and that there was a real distinction between them—had a certain Marxian subtlety, but he would not have made his case with very many Progressive readers if he had actually stuck to it. Instead, in the course of his book that side of the case, the "class" side, slipped entirely out of sight while the personal side, the one that really engaged Beard's mind, just grew and grew. The distinction was impossible to maintain; even to him it was probably not very serious. At any rate, the reason he was able to create his sensation was that the things he showed the Fathers doing were of exactly the sort that the muckraking magazines had, in other connections, made all too familiar.

Beard's basic research materials were a batch of old Treasury records which had never previously been opened ("reality"), and in them he found the names of a number of the Federalist leaders, members of the Philadelphia Convention as well as delegates to ratifying conventions in the various states. These men held substantial amounts of Continental securities which—Beard reasoned from later developments—would rise sharply in value with the establishment of a strong central government. This seemed to explain the energy with which they worked to bring such a government into being, and this was just the sort of evidence that impressed Beard's contemporaries most. Beard himself, for all his disclaimers, sums up his argument in language whose dominant theme is *direct personal interest.* Here, three of his thirteen conclusions are quite explicit:

> (1) The first firm steps toward the formation of the Constitution were taken by a small and active group of men immediately interested through their personal possessions in the outcome of their labors.
>
> (2) The members of the Philadelphia Convention who drafted the Constitution were, with a few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system.
>
> (3) The leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the Philadelphia Convention; and in a large number of instances they were also directly and personally interested in the outcome of their efforts.

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Accompanying the principal theme of personal interest were several sub-themes:

> (1) The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.
>
> (2) [The entire process, from the calling of the Philadelphia Convention to the ratifying of the Constitution, was unrepresentative and undemocratic; there was no popular vote on calling the convention; a large propertyless (and therefore disfranchised) mass was not represented at Philadelphia; and only a small minority in each state voted for delegates to the ratifying conventions.][2]
>
> (3) [Where battles did occur over ratification], the line of cleavage . . . was between substantial personalty interests on the one hand and the small farmers and debtor interests on the other.

Beard thus managed in the end to have it both ways; he charged the Fathers, as members of a class, with things of which he had said he was not going to accuse them as individuals. But the distinction was too fine to matter a great deal; the response to the book, both favorable and hostile, was based on the secrets Beard had unearthed about the Fathers as individuals. Few of his readers had paid much attention to the subtle relationship which he had tried to establish between class interest and political ideology, so few could have noticed when the relationship began to dissolve. Actually, few had had any real quarrel with capitalism in the first place; the Progressive mentality was simply frightened by *big* capitalism—that is, by the vested interests. Beard himself was nothing if not a Progressive, fully immersed in his times. It was the interests and their inside doings that caught the Progressive imagination; it was this that the Progressives longed to befool and discomfit by public exposure. If Beard was to show that the Federal Constitution was not a product of abstract political theory but of concrete economic drives, there was no happier way of doing it than to paint the Founding Fathers in the familiar image of the vested interests—the small group of wealthy conspirators hostile to, even contemptuous of, the majority will, and acting for clear, "practical" reasons such as rigging the value of public securities.

Despite the bursts of pained protests which *An Economic Inter-*

[2] Not a direct quotation but a summary of four of the thirteen conclusions.

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*pretation* initially drew from many older academics (who either thought that Beard could comprehend no motives other than base ones, or else concluded that he must be a socialist), it also drew plenty of praise from academic as well as non-academic quarters. Not only did the book do well for a scholarly monograph, it did better and better as time went on. In the 1920's the reforming side of Progressivism had lost its popularity, but this was not true of the debunking side. Meanwhile the success of Vernon L. Parrington's *Main Currents in American Thought* (which owed much to Beardian influences), as well as of Beard's own *Rise of American Civilization,* served to keep Beard's views before the public.

The *Economic Interpretation* came fully into its own in the New Deal era. The times by then required a conception of the Constitution that would stress the flexible, rather than the rigid and immutable aspects of the document. Former President Hoover, and even the Supreme Court, were apparently insisting in the face of all enlightened opinion that social and economic experimentation of any kind was ruled out by the spirit of the Constitution. Yet it would be reasonable enough to expect that the Constitution should respond to the economic needs of the present, if there were convincing historical proof that its very birth had been in response to the economic needs of its framers. American intellectuals, moreover, had by this time become a good deal more accustomed to ideas of class conflict than formerly. To significant numbers of them the image of class struggle was now appealing enough that they had begun applying it in a spirit of experimentation to a great variety of problems. Business groups of every sort had fallen into bad odor. This was the setting in which prophetic insights came to be ascribed to the writings of Charles A. Beard. Those writings by the late 1930's had become voluminous, and the Master had acquired a legion of followers.

And the Master himself could still have it both ways. Marxist and quasi-Marxist interpretations of society could, and did for a season, draw much historical sanction from his pages. At the same time Beard had bequeathed to American historical method something far more pervasive, a technique of explanation which could take "class" interpretations or leave them alone. This was the "reality" technique, which assumes that the most significant aspects of any event are those concealed from the eye.

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Men's true intentions are to be judged neither from the words we hear them speak nor the deeds we see them do, and the "real" forces behind historical change will turn out, more often than not, to be those of conspiracy.

## II

In 1940 certain new and interesting corollaries were added to the mode of approach which, due so largely to Beard's example, had come to influence historical thinking on the formation of the Constitution. In that year Merrill Jensen published *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781.* Jensen's own approach was consistent with most of the general principles which had been laid down by Beard. But whereas Beard's primary interest had been with the Federalists—the men who led and supported the campaign for a new constitution—Jensen turned his attention to the Anti-Federalists, those who had opposed the constitutional movement. What, he asked, was the nature of the political system which the Constitution displaced, and what were the aims and intentions of the men who had created that system?

In the face of most prior opinion to the contrary, Jensen found in the Confederation just the sort of loose arrangement most favorable to democratic self-rule on the local and state level, inasmuch as the primary authority was located in the state legislatures. It was for achieving exactly this object, he thought, that the Confederation's strongest supporters—such leaders as Samuel Adams, Patrick Henry, Thomas Burke, and Richard Henry Lee—had pushed the Colonies into the Revolution in the first place. Conversely, those who opposed the Confederation were the men who had at first been reluctant to support the Revolution. They had feared the consequences of a break with England because that would remove the one central power strong enough to restrain the forces of local democracy. These men did, to be sure, join the Patriot forces after the break had become inevitable. Yet almost at once they began working for a continental government which might supply the stabilizing and conservative force previously maintained by the Crown. Their eventual triumph would come, of course, at Philadelphia in 1787.

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In a second book, *The New Nation* (1950), Jensen considered the accomplishments of the Confederation, together with the social and economic conditions of the period from 1781 to 1789. He concluded that the "critical period" was really not so critical after all. American ships were not excluded from many foreign ports; tariff wars between states were the exception rather than the rule; the Confederation government had solved the problem of western lands and was well on the way to settling the outstanding boundary disputes. By 1786 the economic depression which had struck the country in 1784 was coming to an end. Even the problem of national credit was not so serious as the Federalists wanted people to believe, since a number of the states had assumed responsibility for portions of the Continental debt held by their own citizens. Had the states been brought to accept a national impost—a tariff duty on incoming foreign goods levied solely and exclusively by Congress, the revenue of which would be reserved for the support of the government—the Confederation would have been fully capable of surviving and functioning as a true federal establishment.

The collapse of the Confederation, Jensen argued, was not the logical outcome of weakness or inefficiency. It was the result of a determined effort by a small but tightly-organized group of nationalists to impose a centralized government upon the entire country despite the contrary desires of great majorities everywhere:

> Most of these men were by temperament or economic interest believers in executive and judicial rather than legislative control of state and central governments, in the rigorous collection of taxes, and, as creditors, in strict payment of public and private debts. . . . They deplored the fact that there was no check upon the actions of majorities in state legislatures; that there was no central government to which minorities could appeal from the decisions of such majorities, as they had done before the Revolution.

These were the men who conspired to overthrow the Confederation and who masterminded the triumph of the Constitution.

There were points at which Jensen had not seen eye to eye with Beard. He was more impressed, for instance, by the Fathers' general outlook and ideology than by their property holdings; unlike Beard, moreover, he denied that the Confederation era was a time of serious economic difficulty. Yet he had actually strengthened the Beardian logic at more than one point, and

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the differences were minor in the light of the convictions which united the two in spirit and intention. The work of Merrill Jensen, like that of Beard and Parrington and J. Allen Smith before him, still balanced on the assumption that the energy behind the American Constitution was conspiratorial energy, and that the Constitution came into being by means of a coup d'état—through the plotting of a well-disciplined Toryish few against the interests of an unvigilant democratic majority.

Indeed, Merrill Jensen's *The New Nation*—published two years after the death of Charles Beard—was the last major piece of Constitution scholarship to be done in the Progressive tradition, and represented the end of an era. By that time, 1950, Beard's own notions had begun to arouse not the admiration, but the suspicion, of a new generation of postwar intellectuals.

## III

A few modest little articles, case studies of ratifying conventions held in individual states in 1788, had begun appearing here and there in the regional quarterlies. In 1947 there was one by Philip Crowl on Maryland, another on North Carolina by William Pool in 1950, still another on Virginia by Robert Thomas in 1953. Such fragments, of course, could not be expected to cause much immediate stir. But these studies carried implications, similar in each case, that would prove in the long run profoundly damaging to the whole structure of Beardian scholarship and Beardian reasoning.

A major item in that reasoning had been Beard's assumption that the principle which differentiated Federalists from Anti-Federalists was the principle of class and property interests—that the Federalists as a group were upholding one kind of class interest and defending one form of property while the Anti-Federalists, presumably, represented something else, something basically opposed. For some reason, Beard had never taken the trouble to check the Anti-Federalist side of his equation. Thomas, in his study of the delegates to the Virginia ratifying convention (where the fight had been unusually bitter), discovered that the members of both sides held property of essentially the same kind, in approximately the same amounts, and represented the same social class—the planting gentry. The other studies showed a similar pattern. In short, the conflict

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over ratification was apparently fought out not between classes, but between cliques of the same ruling class within these states, and whatever the conflict's "real" basis, it was not a struggle over property rights as such. Beard's "class" and "property" formula was simply indeterminate; the story had to be found elsewhere.

By 1956, Beard's *Economic Interpretation* had been set up for the *coup de grâce.* The executioner was Robert E. Brown, a professor at Michigan State who had been at work for some time implacably compiling a catalogue of the Master's offenses. In his *Charles Beard and the Constitution,* published that year, Brown tracked Beard through every page of the latter's masterpiece and laid the ax to virtually every statement of importance that Beard had made in it. There was absolutely no correlation between the Philadelphia delegates' property holdings and the way they behaved on the question of a constitution. It was not true that large numbers of adult males were disfranchised; the suffrage was remarkably liberal everywhere. Farmers as a class were by no means chronically debtors; many were creditors and many others were both. The supporters of Shays' Rebellion (the debtors' uprising in western Massachusetts which occurred during the fall and winter of 1786-1787) were certainly not united against the Constitution; if they had been, it could never have been ratified, since the Shaysites had a clear majority at the time of the Massachusetts convention. Nor did the Philadelphia delegates know that the Continental debt would be funded at par. If they had, the banker Robert Morris, for one, would never have speculated in western lands with the thought of paying for them in depreciated Continental paper.

Not only was Beard's evidence inconclusive at all points, Brown insisted, but there were even occasions when the Master had not been above doctoring it. He edited Madison's Federalist No. 10 to eliminate all but its economic emphasis; he quoted only those passages of the Philadelphia debates that made the Fathers look least democratic; he arranged his treatment of the ratification process in an order that violated chronology, centered unjustified attention on states where hard struggles did occur, overlooked the ease with which ratification was achieved in other states, and thus created a wildly exaggerated picture of the opposition at large.

Brown's book was respectfully received; there was little in-

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clination to dispute his arguments; no champions arose to do serious battle for the departed Beard. Some of the reviewers were a little dismayed at Brown's tone; they thought it need not have been quite so ferocious. And the book did seem to bear out the principle that any work of destruction in the realm of discourse, however necessary, must be executed within restrictions that make for a certain stultification. Richard Hofstadter remarked in this connection that Brown was "locked in such intimate embrace with his adversary that his categories are entirely dictated by Beard's assertions." Even Brown, in his way, had toyed with the "reality" theme. He had exonerated the Fathers of conspiratorial intentions but convicted Charles Beard in their place: Beard had cooked the evidence, had conspired to hide the truth.

The first effort in recent years to view the Constitution all over again in a major way, shaking off the Beardian categories and starting as it were from scratch, has been undertaken by Forrest McDonald. *We The People,* published in 1958, was the first of a planned trilogy whose design was to survey anew the entire story of how the Constitution was brought into existence. Although McDonald, like Brown, felt it necessary to show the inadequacy of Beard's conclusions, his strategy was quite different from Brown's; it was undertaken less to discredit Beard than to clear the way for his own projected treatment of the great subject. In the *Economic Interpretation,* Beard had made a number of proposals for research which he himself had not performed—and never did perform—but which would, Beard felt, further corroborate his own "frankly fragmentary" work. McDonald began by undertaking the very research which Beard had suggested, and its results convinced him that Beard had simply asked all the wrong questions.

One of the things McDonald investigated in *We The People* was an assumption upon which Beard had put a great deal of stress, the notion of a fundamental antagonism between "personalty" and "realty" interests at the time of the Philadelphia Convention. ("Personalty" was wealth based on securities, money, commerce, or manufacturing; "realty" was landed property whose owners' outlook tended to be primarily agrarian.) He found that there was no such split in the Convention. The seven men who either walked out of the Convention or else refused to sign the completed document were among the heaviest

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security-holders there, and represented "an all-star team of personalty interests." In state after state, moreover, there was no appreciable difference between the property holdings of Federalists and Anti-Federalists. Finally, the three states that ratified the Constitution unanimously—Delaware, New Jersey, and Georgia—were overwhelmingly dominated by agrarian interests.

Unlike Brown, McDonald was quite unwilling to write off the possibility of an economic analysis (his book's subtitle was *The Economic Origins of the Constitution*); it was just that Beard's particular economic categories led nowhere. Beard's sweeping "personalty" and "realty" classifications were meaningless, and he had deceived himself profoundly in supposing that the Federalists' property interests "knew no state boundaries" but were "truly national in scope." On these two points of difference McDonald set up an entirely new and original research scheme, and in so doing effected a really impressive conceptual maneuver. He was quite ready, in the first place, to find "economic forces" behind the movement for a constitution, but these must be sought not in "classes" or in broad categories of property but rather in the specific business interests of specific groups in specific places. The other organizing category would be the individual states themselves. The political framework within which any group had to operate was still that imposed by the state; the states were, after all, still sovereign units, and the precise relationship between economic forces and political action depended almost entirely on the special conditions within those states, conditions which varied from one to the other.

By abandoning Beard's "national" framework and recasting the entire problem on a state-by-state basis, McDonald made it possible to see with a sudden clarity things which ought to have been obvious all along. The states where ratification was achieved most readily were those that were convinced, for one reason or another, that they could not survive and prosper as independent entities; those holding out the longest were the ones most convinced that they could go it alone. The reasons for supporting ratification might vary considerably from state to state. For Georgia, an impending Indian war and the need for military protection could transcend any possible economic issue; New York, at one time imagining for itself an independent political and economic future, would finally ratify for fear of

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being isolated from a system which already included ten states and which might soon be joined by a seceded New York City.

The single problem of the Continental debt took different forms in different states. New Jersey, Massachusetts, and New York had each assumed portions of the debt held by their own citizens, but New Jersey and Massachusetts found their obligations intolerably burdensome while New York did not. Massachusetts had put an excessively heavy load on its direct property and poll-tax system; thus any possibility of the debt's being funded by a new Federal government should have found both the Boston security-holder and the Shaysite debtor more than willing to support such a government—and this, it appears, is about what happened. In New York and New Jersey an additional key to the debt issue was the question of a national tariff. New York had a state tariff, which was part of a financial system worked out to service the debt, and for that reason the state had been reluctant to accept a national impost in 1786. New Jersey, on the other hand, with no ocean trade of any account and having to receive most of its imports through New York, had no such revenue, was hard pressed to maintain interest payments on its debt, and thus had everything to gain from both a national impost and a national funding system. New Jersey was one of the first to ratify, and did so unanimously.

Recognizing the importance of specific location made it also easier and more natural to appreciate the way in which particular interests in particular places might be affected by the question of a stronger national government. Boston shipping interests, for example, seem to have been less concerned in the 1780's over class ideology or general economic philosophy than over those conditions of the times which were especially bad for business. The British would not let them into the West Indies, the French were excluding their fish, and their large vessels were no longer profitable. A strong national government could create a navy whose very existence would reduce high insurance rates; it could guarantee an orderly tariff system that would remove all pressure for higher and higher state tariffs; and it could counter British and French discrimination by means of an effective navigation act. Manufacturing interests would also tend to favor the Constitution, though not necessarily on principle; the vigor of their support would depend on the size of their establishments and the extent to which they competed with England.

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Support from Pennsylvania iron and Connecticut textiles would be particularly energetic. So also with the wheat and tobacco farmers of the Connecticut Valley, though not for the same reason. They had to pay import taxes to New York for the goods they bought (their crops were sold there); they were heavily taxed, at the same time, to support a state-funded debt which they would be only too glad to see removed by a central government. Farmers in the Kentucky area, on the other hand, could be very suspicious of a Constitution under which northeastern shipping interests might influence the government to surrender free navigation on the Mississippi in return for a favorable trade treaty with Spain.

Forrest McDonald's work, according to him, has only just begun; years of it still lie ahead. But already a remarkable precision of detail has been brought to the subject, together with a degree of sophistication which makes the older economic approach—"tough-minded" as it once imagined itself—seem now a little wan and misty. The special internal conditions of the several states now seem fully valid as clues to the ratification policies of those states, each in its separate turn. And there is a credibility about the immediate needs and aspirations of particular groups, and the way they varied from place to place, that Beard's "interests" never quite possessed—or if they did, they had long since lost their hold on the modern mind.

And yet there are overtones in McDonald's work—for all its precise excellence, perhaps partly because of it—that have already succeeded in creating a new kind of "reality" spell. McDonald is very open-minded about all the manifold and complex and contradictory forces that converged upon the movement for a constitution. But somehow the ones he takes most seriously—the "real" forces behind the movement—were specific, particular, circumscribed, hard, and immediate. They were to be looked for mostly on the local level, because that is where one really finds things. A state—the largest permissible "reality" unit—was an agglomeration of specific, particular, immediate localities. There were interests to be served, political or economic, and they were *hard.* They were pursued rationally and without sentimentality; men came down where they did because their hard, immediate, specific interests brought them there. But are we prepared to say that the final result was just the sum—or extension—of these interests?

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No doubt large enough numbers of people were convinced of the economic advantages they would gain under a new federal government that we may, thanks to Professor McDonald, account for a considerable measure of the support which the Constitution received. In places where there was a balance to tip, we have a much better idea of just how it happened. Still, Merrill Jensen pointed out some time ago that the economic situation was already somewhat on the mend by 1786. There were, moreover, certain powerful states such as Virginia and New York that might very well have thrived either as independent units or in coalitions with their immediate neighbors. And conditions in general could not have been so desperate that a national government was absolutely required for solving economic problems, let alone for staving off economic collapse. The steps actually taken were not the only ones possible; there were certainly alternatives, and it is hard to believe that they would all have led to disaster.

The new approach is extremely enlightening and useful. But has it yet taken on life? When will it fully engage the question of initiative and energy? How do we account for the dedication, the force and éclat, of Federalist leadership? When all is said and done, we do not exactly refer to the "interests" of a James Madison. We wonder, instead, about the terms in which he conceives of personal fulfillment, which is not at all the same. What animates him? The nationalist movement *did* have a mystique that somehow transfigured a substantial number of its leaders. What was it like, what were its origins?

## IV

The work of Merrill Jensen, done in the 1930's and 1940's, has suffered somewhat in reputation due to the sweep and vehemence of the anti-Beardian reaction. Yet that work contains perceptions which ought not to be written off in the general shuffle. They derive not so much from the over-all Beardian traditions and influences amid which Jensen wrote, as from that particular sector of the subject which he marked off and preëmpted for his own. Simply by committing himself—alone among Beardians and non-Beardians—to presenting the Confederation era as a legitimate phase of American history, entitled to be taken seriously like any other and having a positive side as well as a nega-

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tive one, he has forced upon us a peculiar point of view which, by the same token, yields its own special budget of insights. For example, Jensen has been profoundly impressed by the sheer force, determination, and drive of such nationalist leaders as Hamilton, Madison, Jay, Knox, and the Morrises. This energy, he feels, created the central problem of the Confederation and was the major cause of its collapse. He deplores this, seeing in the Confederation "democratic" virtues which it probably never had, finding in the Federalists an "aristocratic" character which in actual fact was as much or more to be found in the Anti-Federalists, smelling plots everywhere, and in general shaping his nomenclature to fit his own values and preferences. But if Professor Jensen seems to have called everything by the wrong name, it is well to remember that nomenclature is not everything. The important thing—what does ring true—is that this driving "nationalist" energy was, in all probability, central to the movement that gave the United States a new government.

The other side of the picture, which does not seem to have engaged Jensen's mind half so much, was the peculiar sloth and inertia of the Anti-Federalists. Cecelia Kenyon, in a brilliant essay on these men,[3] has shown them as an amazingly reactionary lot. They were transfixed by the specter of power. It was not the power of the aristocracy that they feared, but power of any kind, democratic or otherwise, that they could not control for themselves. Their chief concern was to keep governments as limited and as closely tied to local interests as possible. Their minds could not embrace the concept of a national interest which they themselves might share and which could transcend their own parochial concerns. Republican government that went beyond the compass of state boundaries was something they could not imagine. Thus the chief difference between Federalists and Anti-Federalists had little to do with "democracy" (George Clinton and Patrick Henry were no more willing than Gouverneur Morris to trust the innate virtue of the people), but rather in the Federalists' conviction that there was such a thing as national interest and that a government could be established to care for it which was fully in keeping with republican principles.

[3] "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly*, XII, 3rd ser. (January 1955), pp. 3-43.

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To the Federalists this was not only possible but absolutely necessary, if the nation was to avoid a future of political impotence, internal discord, and in the end foreign intervention. So far so good. But still, exactly how did such convictions get themselves generated?

Merrill Jensen has argued that the Federalists, by and large, were reluctant revolutionaries who had feared the consequences of a break with England and had joined the Revolution only when it was clear that independence was inevitable. The argument is plausible; few of the men most prominent later on as Federalists had been quite so hot for revolution in the very beginning as Patrick Henry and Samuel Adams. But this may not be altogether fair; Adams and Henry were already veteran political campaigners at the outbreak of hostilities, while the most vigorous of the future Federalists were still mere youngsters. The argument, indeed, could be turned entirely around: the source of Federalist, or nationalist, energy was not any "distaste" for the Revolution on these men's part, but rather their profound and growing involvement in it.

Much depends here on the way one pictures the Revolution. In the beginning it simply consisted of a number of state revolts loosely directed by the Continental Congress; and for many men, absorbed in their effort to preserve the independence of their own states, it never progressed much beyond that stage even in the face of invasion. But the Revolution had another aspect, one which developed with time and left a deep imprint on those connected with it, and this was its character as a continental war effort. If there is any one feature that most unites the future leading supporters of the Constitution, it was their close engagement with this continental aspect of the Revolution. A remarkably large number of these someday Federalists were in the Continental Army, served as diplomats or key administrative officers of the Confederation government, or, as members of Congress, played leading rôles on those committees primarily responsible for the conduct of the war.

Merrill Jensen has compiled two lists, with nine names in each, of the men whom he considers to have been the leading spirits of the Federalists and Anti-Federalists respectively. It would be well to have a good look at this sample. The Federalists—Jensen calls them "nationalists"—were Robert Morris, John Jay, James Wilson, Alexander Hamilton, Henry Knox, James Duane,

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George Washington, James Madison, and Gouverneur Morris. Washington, Knox, and Hamilton were deeply involved in Continental military affairs; Robert Morris was Superintendent of Finance; Jay was president of the Continental Congress and minister plenipotentiary to Spain (he would later be appointed Secretary for Foreign Affairs); Wilson, Duane, and Gouverneur Morris were members of Congress, all three being active members of the war committees. The Anti-Federalist group presents a very different picture. It consisted of Samuel Adams, Patrick Henry, Richard Henry Lee, George Clinton, James Warren, Samuel Bryan, George Bryan, George Mason, and Elbridge Gerry. Only three of these—Gerry, Lee, and Adams—served in Congress, and the latter two fought consistently against any effort to give Congress executive powers. Their constant preoccupation was state sovereignty rather than national efficiency. Henry and Clinton were active war governors, concerned primarily with state rather than national problems, while Warren, Mason, and the two Bryans were essentially state politicians.

The age difference between these two groups is especially striking. The Federalists were on the average ten to twelve years younger than the Anti-Federalists. At the outbreak of the Revolution George Washington, at 44, was the oldest of the lot; six were under 35 and four were in their twenties. Of the Anti-Federalists, only three were under 40 in 1776, and one of these, Samuel Bryan, the son of George Bryan, was a boy of 16.

This age differential takes on a special significance when it is related to the career profiles of the men concerned. Nearly half of the Federalist group—Gouverneur Morris, Madison, Hamilton, and Knox—quite literally saw their careers launched in the Revolution. The remaining five—Washington, Jay, Duane, Wilson, and Robert Morris—though established in public affairs beforehand, became nationally known after 1776 and the wide public recognition which they subsequently achieved came first and foremost through their identification with the continental war effort. All of them had been united in an experience, and had formed commitments, which dissolved provincial boundaries; they had come to full public maturity in a setting which enabled ambition, public service, leadership, and self-fulfillment to be conceived, for each in his way, with a grandeur of scope unknown to any previous generation. The careers of the Anti-Federalists, on the other hand, were not only state-centered but—aside from

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those of Clinton, Gerry, and the young Bryan—rested heavily on events that preceded rather than followed 1776.

As exemplars of nationalist energy, two names in Professor Jensen's sample that come most readily to mind are those of Madison and Hamilton. The story of each shows a wonderfully pure line of consistency. James Madison, of an influential Virginia family but with no apparent career plans prior to 1774, assumed his first public rôle as a member of the Orange County Revolutionary Committee, of which his father was chairman. As a delegate from Orange County he went to the Virginia convention in 1776 and served on the committee that drafted Virginia's new constitution and bill of rights. He served in the Virginia Assembly in 1776 and 1777 but failed of re-election partly because he refused to treat his constituents to whisky. (He obviously did not have the right talents for a state politician.) In recognition of Madison's services, however, the Assembly elected him to the Governor's Council, where he served from 1778 to 1780. Patrick Henry was then Governor; the two men did not get on well and in time became bitter political enemies. At this period Madison's primary concern was with supplying and equipping the Continental Army, a concern not shared to his satisfaction by enough of his colleagues. It was then, too, that he had his first experience with finance and the problems of paper money. He was elected to the Continental Congress in 1780, and as a member of the Southern Committee was constantly preoccupied with the military operations of Nathanael Greene. The inefficiency and impotence of Congress pained him unbearably. The Virginia Assembly took a strong stand against federal taxation which Madison ignored, joining Hamilton in the unsuccessful effort to persuade the states to accept the impost of 1783. From the day he entered politics up to that time, the energies of James Madison were involved in continental rather than state problems—problems of supply, enlistment, and finance—and at every point his chief difficulties came from state parochialism, selfishness, and lack of imagination. His nationalism was hardly accidental.

The career line of Alexander Hamilton, *mutatis mutandis*, is functionally interchangeable with that of James Madison. Ambitious, full of ability, but a young man of no family and no money, Hamilton arrived in New York from the provinces at the age of 17 and in only two years would be catapulted into a

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brilliant career by the Revolution. At 19 he became a highly effective pamphleteer while still a student at King's College, was captain of an artillery company at 21, serving with distinction in the New York and New Jersey campaigns, and in 1777 was invited to join Washington's staff as a lieutenant-colonel. He was quickly accepted by as brilliant and aristocratic a set of youths as could be found in the country. As a staff officer he became all too familiar with the endless difficulties of keeping the Continental Army in the field from 1777 to 1780. With his marriage to Elizabeth Schuyler in 1780 he was delightedly welcomed into one of New York's leading families, and his sage advice to his father-in-law and Robert Morris on matters of finance and paper money won him the reputation of a financial expert with men who knew an expert when they saw one. He had an independent command at Yorktown. He became Treasury representative in New York in 1781, was elected to Congress in 1782, and worked closely with Madison in the fruitless and discouraging effort to create a national revenue in the face of state particularism. In the summer of 1783 he quit in despair and went back to New York. Never once throughout all this period had Alexander Hamilton been involved in purely state affairs. His career had been a continental one, and as long as the state-centered George Clinton remained a power in New York, it was clear that this was the only kind that could have any real meaning for him. As with James Madison, Hamilton's nationalism was fully consistent with all the experience he had ever had in public life, experience whose sole meaning had been derived from the Revolution. The experience of the others—for instance that of John Jay and Henry Knox—had had much the same quality; Knox had moved from his bookstore to the command of Washington's artillery in little more than a year, while Jay's public career began with the agitation just prior to the Revolution and was a story of steady advancement in continental affairs from that time forward.

The logic of these careers, then, was in large measure tied to a chronology which did not apply in the same way to all the men in public life during the two decades of the 1770's and 1780's. A significant proportion of relative newcomers, with prospects initially modest, happened to have their careers opened up at a particular time and in such a way that their very public personalities came to be staked upon the national quality of

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the experience which had formed them. In a number of outstanding cases energy, initiative, talent, and ambition had combined with a conception of affairs which had grown immense in scope and promise by the close of the Revolution. There is every reason to think that a contraction of this scope, in the years that immediately followed, operated as a powerful challenge.

## V

The stages through which the constitutional movement proceeded in the 1780's add up to a fascinating story in political management, marked by no little élan and dash. That movement, viewed in the light of the Federalist leaders' commitment to the Revolution, raises some nice points as to who were the "conservatives" and who were the "radicals." The spirit of unity generated by the struggle for independence had, in the eyes of those most closely involved in coördinating the effort, lapsed; provincial factions were reverting to the old provincial ways. The impulse to arrest disorder and to revive the flame of revolutionary unity may be pictured in "conservative" terms, but this becomes quite awkward when we look for terms with which to picture the other impulse, so different in nature: the urge to rest, to drift, to turn back the clock.

Various writers have said that the activities of the Federalists during this period had in them a clear element of the conspiratorial. Insofar as this refers to a strong line of political strategy, it correctly locates a key element in the movement. Yet without a growing base of popular dissatisfaction with the status quo, the Federalists could have skulked and plotted forever without accomplishing anything. We now know, thanks to recent scholarship, that numerous elements of the public were only too ripe for change. But the work of organizing such a sentiment was quite another matter; it took an immense effort of will just to get it off the ground. Though it would be wrong to think of the Constitution as something that had to be carried in the face of deep and basic popular opposition, it certainly required a series of brilliant maneuvers to escape the deadening clutch of particularism and inertia. An Anti-Federalist "no" could register on exactly the same plane as a Federalist "yes" while requiring a fraction of the energy. It was for this reason that the Federalists, even though they cannot be said to have

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circumvented the popular will, did have to use techniques which in their sustained drive, tactical mobility, and risk-taking smacked more than a little of the revolutionary.

By 1781, nearly five years of intimate experience with the war effort had already convinced such men as Washington, Madison, Hamilton, Duane, and Wilson that something had to be done to strengthen the Continental government, at least to the point of providing it with an independent income. The ratification of the Articles of Confederation early in the year (before Yorktown) seemed to offer a new chance, and several promising steps were taken at that time. Congress organized executive departments of war, foreign affairs, and finance to replace unwieldy and inefficient committees; Robert Morris was appointed Superintendent of Finance; and a 5 per cent impost was passed which Congress urged the states to accept.

By the fall of 1782, however, the surge for increased efficiency had lost the greater part of its momentum. Virginia had changed its mind about accepting the impost, Rhode Island having been flatly opposed all along, and it became apparent that as soon as the treaty with England (then being completed) was ratified, the sense of common purpose which the war had created would be drained of its urgency. At this point Hamilton and the Morrises, desperate for a solution, would have been quite willing to use the discontent of an unpaid army as a threat to coerce the states out of their obstructionism, had not Washington refused to lend himself to any such scheme. Madison and Hamilton thereupon joined forces in Congress to work out a revenue bill whose subsidiary benefits would be sufficiently diffuse to gain it general support among the states. But in the end the best that could be managed was a new plan for a 5 per cent impost, the revenues of which would be collected by state-appointed officials. Once more an appeal, drafted by Madison, was sent to the states urging them to accept the new impost, and Washington wrote a circular in support of it. The effort was in vain. The army, given one month's pay in cash and three in certificates, reluctantly dispersed, and the Confederation government, with no sanctions of coercion and no assured revenues, now reached a new level of impotence. In June, 1783, Alexander Hamilton, preparing to leave Congress to go back to private life, wrote in discouragement and humiliation to Nathanael Greene:

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> There is so little disposition either in or out of Congress to give solidity to our national system that there is no motive to a man to lose his time in the public service, who has no other view than to promote its welfare. Experience must convince us that our present establishments are Utopian before we shall be ready to part with them for better.

Whether or not the years between 1783 and 1786 should be viewed as a "critical period" depends very much on whose angle they are viewed from. Although it was a time of economic depression, the depressed conditions were not felt in all areas of economic life with the same force, nor were they nearly as damaging in some localities as in others; the interdependence of economic enterprise was not then what it would become later on, and a depression in Massachusetts did not necessarily imply one in Virginia, or even in New York. Moreover, there were definite signs of improvement by 1786. Nor can it necessarily be said that government on the state level lacked vitality. Most of the states were addressing their problems with energy and decision. There were problems everywhere, of course, many of them very grave, and in some cases (those of New Jersey and Connecticut in particular) solutions seemed almost beyond the individual state's resources. Yet it would be wrong, as Merrill Jensen points out, to assume that no solutions were possible within the framework which then existed. It is especially important to remember that when most people thought of "the government" they were not thinking of Congress at all, but of their own state legislature. For them, therefore, it was by no means self-evident that the period through which they were living was one of drift and governmental impotence.

But through the eyes of men who had come to view the states collectively as a "country" and to think in continental terms, things looked altogether different. From their viewpoint the Confederation was fast approaching the point of ruin. Fewer and fewer states were meeting their requisition payments, and Congress could not even pay its bills. The states refused to accept any impost which they themselves could not control, and even if all the rest accepted, the continued refusal of New York (which was not likely to change) would render any impost all but valueless. Local fears and jealousies blocked all efforts to establish uniform regulation of commerce, even though some such regulation seemed indispensable. A number of the states,

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New York in particular, openly ignored the peace treaty with England and passed discriminatory legislation against former Loyalists; consequently England, using as a pretext Congress' inability to enforce the treaty, refused to surrender the northwest posts. Morale in Congress was very low as members complained that lack of a quorum prevented them most of the time from transacting any business; even when a quorum was present, a few negative votes could block important legislation indefinitely. Any significant change, or any substantial increase in the power of Congress, required unanimous approval by the states, and as things then stood this had become very remote. Finally, major states such as New York and Virginia were simply paying less and less attention to Congress. The danger was not so much that of a split with the Confederation—Congress lacked the strength that would make any such "split" seem very urgent—but rather a policy of neglect that would just allow Congress to wither away from inactivity.

These were the conditions that set the stage for a fresh effort—the Annapolis Convention of 1786—to strengthen the continental government. The year before, Madison had arranged a conference between Maryland and Virginia for the regulation of commerce on the Potomac, and its success had led John Tyler and Madison to propose a measure in the Virginia Assembly that would give Congress power to regulate commerce throughout the Confederation. Though nothing came of it, a plan was devised in its place whereby the several states would be invited to take part in a convention to be held at Annapolis in September, 1786, for the purpose of discussing commercial problems. The snapping-point came when delegates from only five states appeared. The rest either distrusted one another's intentions (the northeastern states doubted the southerners' interest in commerce) or else suspected a trick to strengthen the Confederation government at their expense. It was apparent that no serious action could be taken at that time. But the dozen delegates who did come (Hamilton and Madison being in their forefront) were by definition those most concerned over the state of the national government, and they soon concluded that their only hope of saving it lay in some audacious plenary gesture. It was at this meeting, amid the mortification of still another failure, that they planned the Philadelphia Convention.

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The revolutionary character of this move—though some writers have correctly perceived it—has been obscured both by the stateliness of historical retrospection and by certain legal peculiarities which allowed the proceeding to appear a good deal less subversive than it actually was. The "report" of the Annapolis meeting was actually a call, drafted by Hamilton and carefully edited by Madison, for delegates of all the states to meet in convention at Philadelphia the following May for the purpose of revising the Articles of Confederation. Congress itself transmitted the call, and in so doing was in effect being brought to by-pass its own constituted limits. On the one hand, any effort to change the government within the rules laid down by the Articles would have required a unanimous approval which could never be obtained. But on the other hand, the very helplessness which the several states had imposed upon the central government meant in practice that the states were sovereign and could do anything they pleased with it. It was precisely this that the nationalists now prepared to exploit: this legal paradox had hitherto prevented the growth of strong loyalty to the existing Confederation and could presently allow that same Confederation, through the action of the states, to be undermined in the deceptive odor of legitimacy. Thus the Beardian school of constitutional thought, for all its errors of economic analysis and its transposing of ideological semantics, has called attention to one element—the element of subversion—that is actually entitled to some consideration.

But if the movement had its plotters, balance requires us to add that the "plot" now had a considerable measure of potential support, and that the authority against which the plot was aimed had become little more than a husk. Up to this time every nationalist move, including the Annapolis Convention, had been easily blocked. But things were now happening in such a way as to tip the balance and to offer the nationalists for the first time a better-than-even chance of success. There had been a marked improvement in business, but shippers in Boston, New York, and Philadelphia were still in serious trouble. Retaliatory measures against Great Britain through state legislation had proved ineffective and useless; there was danger, at the same time, that local manufacturing interests might be successful in pushing through high state tariffs. In the second place, New York's refusal to reconsider a national impost, except on

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terms that would have removed its effectiveness, cut the ground from under the moderates who had argued that, given only a little time, everything could be worked out. This did not leave much alternative to a major revision of the national government. Then there were Rhode Island's difficulties with inflationary paper money. Although that state's financial schemes actually made a certain amount of sense, they provided the nationalists with wonderful propaganda and helped to create an image of parochial irresponsibility.

The most decisive event of all was Shays' Rebellion in the fall and winter of 1786-1787. It was this uprising of hard-pressed rural debtors in western Massachusetts that frightened moderate people everywhere and convinced them of the need for drastic remedies against what looked like anarchy. The important thing was not so much the facts of the case as the impression which it created outside Massachusetts. The Shaysites had no intention of destroying legitimate government or of redistributing property, but the fact that large numbers of people could very well imagine them doing such things added a note of crisis which was all to the Federalists' advantage. Even the level-headed Washington was disturbed, and his apprehensions were played upon quite knowingly by Madison, Hamilton, and Knox in persuading him to attend the Philadelphia Convention. Actually the Federalists and the Shaysites had been driven to action by much the same conditions; in Massachusetts their concern with the depressed state of trade and the tax burden placed them for all practical purposes on the same side, and there they remained from first to last.

Once the balance had been tipped in enough states, to the point of a working consensus on the desirability of change, a second principle came into effect. Unless a state were absolutely opposed—as in the extreme case of Rhode Island—to any change in the Articles of Confederation, it was difficult to ignore the approaching Philadelphia Convention as had been done with the Annapolis Convention: the occasion was taking on too much importance. There was thus the danger, for such a state, of seeing significant decisions made without having its interests consulted. New York, with strong Anti-Federalist biases but also with a strong nationalist undercurrent, was not quite willing to boycott the convention. Governor Clinton's solution was to send as delegates two rigid state particularists, John Yates and

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Robert Lansing, along with the nationalist Hamilton, to make sure that Hamilton would not accomplish anything.

We have already seen that nineteenth century habits of thought created a ponderous array of stereotypes around the historic Philadelphia conclave of 1787. Twentieth century thought and scholarship, on the other hand, had the task of breaking free from them, and to have done so is a noteworthy achievement. And yet one must return to the point that stereotypes themselves require some form of explanation. The legend of a transcendent effort of statesmanship, issuing forth in a miraculously perfect instrument of government, emerges again and again despite all efforts either to conjure it out of existence or to give it some sort of rational linkage with mortal affairs. Why should the legend be so extraordinarily durable, and was there anything so special about the circumstances that set it on its way so unerringly and so soon?

The circumstances *were*, in fact, special; given a set of delegates of well over average ability, the Philadelphia meeting provides a really classic study in the sociology of intellect. Divine accident, though in some measure present in men's doings always, is not required as a part of this particular equation. The key conditions were all present in a pattern that virtually guaranteed for the meeting an optimum of effectiveness. A sufficient number of states were represented so that the delegates could, without strain, realistically picture themselves as thinking, acting, and making decisions in the name of the entire nation. They themselves, moreover, represented interests throughout the country that were diverse enough, and they had enough personal prestige at home, that they could act in the assurance of having their decisions treated at least with respectful attention. There had also been at work a remarkably effective process of self-selection, as to both men and states. Rhode Island ignored the convention, and as a result its position was not even considered there. There were leading state particularists such as Patrick Henry and Richard Henry Lee who were elected as delegates but refused to serve. The Anti-Federalist position, indeed, was hardly represented at all, and the few men who did represent it had surprisingly little to say. Yates and Lansing simply left before the convention was over. Thus a group already predisposed in a national direction could proceed unhampered by the friction of basic opposition in its midst.

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This made it possible for the delegates to "try on" various alternatives without having to remain accountable for everything they said. At the same time, being relieved from all outside pressures meant that the only way a man could expect to make a real difference in the convention's deliberations was to reach, through main persuasion, other men of considerable ability and experience. Participants and audience were therefore one, and this in itself imposed standards of debate which were quite exacting. In such a setting the best minds in the convention were accorded an authority which they would not have had in political debates aimed at an indiscriminate public.

Thus the elements of secrecy, the general inclination for a national government, and the process whereby the delegates came to terms with their colleagues—appreciating their requirements and adjusting to their interests—all combined to produce a growing esprit de corps. As initial agreements were worked out, it became exceedingly difficult for the Philadelphia delegates not to grow more and more committed to the product of their joint efforts. Indeed, this was in all likelihood the key mechanism, more important than any other in explaining not only the peculiar genius of the main compromises but also the general fitness of the document as a whole. That is, a group of two or more intelligent men who are subject to no cross-pressures and whose principal commitment is to the success of an idea, are perfectly capable—as in our scientific communities of today—of performing what appear to be prodigies of intellect. Moving, as it were, in the same direction with a specific purpose, they can function at maximum efficiency. It was this that the historians of the nineteenth century did in their way see, and celebrated with sweeping rhetorical flourishes, when they took for granted that if an occasion of this sort could not call forth the highest level of statesmanship available, then it was impossible to imagine another that could.

Once the Philadelphia Convention had been allowed to meet and the delegates had managed, after more than three months of work, to hammer out a document that the great majority of them could sign, the political position of the Federalists changed dramatically. Despite the major battles still impending, for practical purposes they now had the initiative. The principal weapon of the Anti-Federalists—inertia—had greatly declined in effectiveness, for with the new program in motion it was no

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longer enough simply to argue that a new federal government was unnecessary. They would have to take positive steps in blocking it; they would have to arouse the people and convince them that the Constitution represented a positive danger.

Moreover, the Federalists had set the terms of ratification in such a way as to give the maximum advantage to energy and purpose; the key choices, this time, had been so arranged that they would fall right. Only nine states had to ratify before the Constitution would go into effect. Not only would this rule out the possibility of one or two states holding up the entire effort, but it meant that the Confederation would be automatically destroyed as an alternative before the difficult battles in New York and Virginia had to be faced. (By then, Patrick Henry in Virginia would have nothing but a vague alliance with North Carolina to offer as a counter-choice.) Besides, there was good reason to believe that at least four or five states, and possibly as many as seven, could be counted as safe, which meant that serious fighting in the first phase would be limited to two or three states. And finally, conditions were so set that the "snowball" principle would at each successive point favor the Federalists.

As for the actual process of acceptance, ratification would be done through state conventions elected for the purpose. Not only would this circumvent the vested interests of the legislatures and the ruling coteries that frequented the state capitals, but it gave the Federalists two separate chances to make their case—once to the people and once to the conventions. If the elected delegates were not initially disposed to do the desired thing, there was still a chance, after the convention met, of persuading them. Due partly to the hampering factor of transportation and distance, delegates had to have considerable leeway of choice and what amounted to quasi-plenipotentiary powers. Thus there could be no such thing as a fully "instructed" delegation, and members might meanwhile remain susceptible to argument and conversion. The convention device, moreover, enabled the Federalists to run as delegates men who would not normally take part in state politics.

The revolutionary verve and ardor of the Federalists, their resources of will and energy, their willingness to scheme tirelessly, campaign everywhere, and sweat and agonize over every vote meant in effect that despite all the hairbreadth squeezes

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and rigors of the struggle, the Anti-Federalists would lose every crucial test. There was, to be sure, an Anti-Federalist effort. But with no program, no really viable commitments, and little purposeful organization, the Anti-Federalists somehow always managed to move too late and with too little. They would sit and watch their great stronghold, New York, being snatched away from them despite a two-to-one Anti-Federalists majority in a convention presided over by their own chief, George Clinton. To them, the New York Federalists must have seemed possessed of the devil. The Federalists' convention men included Alexander Hamilton, James Duane, John Jay, and Robert Livingston —who knew, as did everyone else, that the new government was doomed unless Virginia and New York joined it. They insisted on debating the Constitution section by section instead of as a whole, which meant that they could out-argue the Anti-Federalists on every substantive issue and meanwhile delay the vote until New Hampshire and Virginia had had a chance to ratify. (Madison and Hamilton had a horse relay system in readiness to rush the Virginia news northward as quickly as possible.) By the time the New York convention was ready to act, ten others had ratified, and at the final moment Hamilton and his allies spread the chilling rumor that New York City was about to secede from the state. The Anti-Federalists, who had had enough, directed a chosen number of their delegates to cross over, and solemnly capitulated.

In the end, of course, everyone "crossed over." The speed with which this occurred once the continental revolutionists had made their point, and the ease with which the Constitution so soon became an object of universal veneration, still stands as one of the minor marvels of American history. But the document did contain certain implications, of a quasi-philosophical nature, that make the reasons for this ready consensus not so very difficult to find. It established a national government whose basic outlines were sufficiently congenial to the underlying commitments of the whole culture—republicanism and capitalism—that the likelihood of its being the subject of a true ideological clash was never very real. That the Constitution should mount guard over the rights of property—"realty," "personalty," or any other kind—was questioned by nobody. There had certainly been a struggle, a long and exhausting one, but we should not be deceived as to its nature. It was not fought on economic

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grounds; it was not a matter of ideology; it was not, in the fullest and most fundamental sense, even a struggle between nationalism and localism. The key struggle was between inertia and energy; with inertia overcome, everything changed.

There were, of course, lingering objections and misgivings; many of the problems involved had been genuinely puzzling and difficult; and there remained doubters who had to be converted. But then the perfect bridge whereby all could become Federalists within a year was the addition of a Bill of Rights. After the French Revolution, anti-constitutionalism in France would be a burning issue for generations; in America, an anti-constitutional party was undreamed of after 1789. With the Bill of Rights, the remaining opponents of the new system could say that, ever watchful of tyranny, they had now got what they wanted. Moreover, the Young Men of the Revolution might at last imagine, after a dozen years of anxiety, that *their* Revolution had been a success.

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# THE SOUTH AFRICAN TREASON TRIAL*

ON December 5, 1956, and some days later, 156 Africans, Whites, Indians and Coloreds were arrested by the government of South Africa, accused of being members of "a country-wide conspiracy" inspired by international communism to overthrow the state by violence.[1] Of the trial that has followed, a British observer has said: "Not since the burning of the Reichstag in Berlin in 1933—with the notable exception of the special trials at Nuremberg—has a trial attracted such international attention."[2]

Yet the trial has presented no special problem of legal correctness or, except during the emergency that followed the shooting at Sharpeville in March, 1960, of judicial impartiality. Some substantive questions regarding the meaning of treason in South African law are involved in it, but these are of minor interest. What does make the trial interesting and important is its political meaning, the question of its effect on the prospects

* The author is grateful to Professor Gwendolen Carter, Dean Erwin Griswold, Dr. Waldemar B. Campbell, and friends in South Africa for their comments and suggestions. They bear no responsibility, of course, for what follows.

This article deals with events through 1960. The trial ended on March 29, 1961, when a verdict of not guilty was announced. See pages 239-240.

[1] This article is based largely on documents of public record in the special criminal court in Pretoria, personal observation during 1957-1959, and reports in *The Star* (Johannesburg) and *New Age* (Johannesburg). In South African nomenclature, *Africans* are Bantu Negroes, called "Natives" by most Whites, "Bantu" by the Government, and "Africans" by the politically conscious among themselves and by liberals. *Whites* are "Europeans," Afrikaans-speaking and English-speaking in proportions of 3 to 2. *Coloreds* are racially mixed. *Indians,* or Asians, are mainly Hindus. In the Union's population of 15,841,000 (1960), there are roughly 10.8 Africans to 3.1 Whites to 1.5 Coloreds to .5 Indians.

[2] L. J. Blom-Cooper, "The South African Treason Trial: R. v. Adams and Others," *The International and Comparative Law Quarterly,* January 1959, p. 59. Another British observer wrote in mid-1957 that the trial was "unique in legal history, unique in the number of accused, in the weight of the documents, in the length of the proceedings and, not least, in the extraordinary width of the laws applicable." Gerald Gardiner, "The South African Treason Trial," *Journal of the International Commission of Jurists,* Autumn 1957, pp. 42, 58. For reports of other observers, see *Bulletin of the International Commission of Jurists,* December 1958 and August 1959.



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for racial reconciliation in South Africa. This article is concerned mainly with this question.

### *The Accused*

The arrests were aimed at the leaders of the extraparliamentary opposition to South Africa's racial policies.[8] The accused were a racially mixed and ideologically diverse group. Approximately two-thirds of them (104 or 105) were Africans. Forty-four were Whites and Indians (nearly the same number of each), and seven or eight were Coloreds. Of the non-Africans, a few were Communists. But the views of the rest ranged from ideological identification with the communist world peace movement to humanitarian identification with Africans. Some of the Indians were followers of Ghandi.

Among the Africans arrested there were only a few who had been members of the Communist party. The most important organizations represented by the accused were the African National Congress (ANC), whose leading officials were arrested, and certain bodies allied with it in the movement known as the Congress of the People. The policies of the ANC were to become the focus of the Prosecution's case. Among ANC leaders who were arrested were ex-Chief Albert Luthuli, a Christian leader who was then and still is President-General, Professor Z. K. Matthews, academically the most distinguished African in the Union, and his son, Joe, a brilliant younger leader.

The ANC had been formed in 1912 by a tiny and conservative class of educated Africans in coöperation with tribal chiefs. Gradually it moved from a conservative African nationalism to militant nationalism and a policy of multi-racial coöperation to attain its ends. In 1952, it waged a country-wide campaign of passive resistance and disobedience to the "unjust laws" of apartheid. As a result, ANC membership grew from 15,000 or

[8] The fullest and most acute analysis of South African politics since 1948 is Professor Gwendolen Carter's *The Politics of Inequality* (New York, 1958), which contains a comprehensive bibliography. The most valuable history of African politics is Edward Roux's *Time Longer than Rope* (London, 1948). Anthony Sampson's *The Treason Cage* (London, 1958), is a short history of the African National Congress and its leaders. See also Edgar H. Brookes and J. B. Macaulay, *Civil Liberty in South Africa* (Cape Town and London, 1958) and Leo Kuper, *Passive Resistance in South Africa* (London, 1956).

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20,000 to 100,000; and about 8,500 volunteers, including some Indians, Coloreds and Whites, went to jail. Rioting and violence occurred before the campaign died down by the end of the year, but, according to Professor Gwendolen Carter, the riots "were neither stimulated nor condoned by the African National Congress."[4] The period that was to be covered by the trial's indictment—October 1, 1952, to December 13, 1956—began a few days before the first riots.

New legislation passed early in 1953 seriously increased the risks to be run in future campaigns of protest. Administrative restrictions on the activities of non-White and radical opponents became more and more severe during the indictment period, and police surveillance amounted to harassment. The tactics of opposition shifted from disobedience to demonstration, and multi-racial coöperation grew closer. Of the campaigns of protest that were loudly proclaimed, however, many were abortive or were deflected in various ways by the government.

The climactic demonstration by the ANC and its allies was a so-called Congress of the People, held near Johannesburg on June 25-26, 1955, and attended by nearly 3,000 delegates of all races. The Congress was planned by representatives of the ANC, by the South African Indian Congress, and by two organizations formed during the preceding year: the South African Congress of Democrats (largely dominated by communist sympathizers), and the South African Colored People's Organization. The latter two, each with only a few hundred members, supplied the White and Colored spokes of the four-spoke wheel that symbolized the Congress of the People.[5]

On June 26, 1955, the Congress of the People adopted a manifesto called the Freedom Charter that was to be the key document in the Prosecution's case. The Charter was largely free of communist phraseology although it displayed traces of com-

[4] Carter, *op. cit.*, p. 374. The Prosecution has not alleged any direct connection between the ANC and the riots.

[5] Other organizations allied to the Congress movement and figuring in the treason arrests were formed during the two years preceding June, 1955: the South African Peace Council, the South African Indian Youth Congress, the Federation of South African Women, and the South African Congress of Trade Unions.

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munist style.[6] In the main, it rang the changes on one theme: all racial discrimination must be abolished and equal rights must be guaranteed for all. This theme had recurred at least since 1943, when a new ANC constitution had proclaimed as an aim "the freedom of the African people from all discriminatory laws whatsoever." The Charter asserted that "our people have been robbed of their birthright" but attempted no historical explanation of the status quo, suggested no philosophy of social change, and proposed no program of action. "These freedoms we will fight for," it concluded, "side by side, throughout our lives, until we have won our liberty." "Freedom in Our Lifetime" appeared on banners at the rally but not in the Charter itself. Some delegates were reported to have said "freedom in the lifetime of Luthuli," who was about fifty-seven and had had a heart attack.

Although communist influence was evident in the trappings and slogans at the June 1955 rally, its importance was limited.[7] The Communists never won control of the ANC. Luthuli has always insisted that he would accept their coöperation only so long as they were not in control. Communist influence was greater among Indians than among Africans. A professed Communist, Dr. Yusuf Dadoo, who was not arrested in December, 1956, was president of the South African Indian Congress. But

[6] The Charter, officially adopted by the ANC early in 1956, promised public ownership of mineral wealth, banks, and monopoly industry, and redivision of the land among those who worked it. Otherwise, it envisioned a social welfare state in which industry and trade were "controlled" for the public welfare, workers were free to form trade unions and to make wage agreements with employers, "no one shall go hungry," and "rest, leisure, and recreation shall be the right of all." Except for a few generalities, the Charter ignored international affairs. The text is in Carter, *op. cit.*, and Sampson, *op. cit.*

[7] Communists have been influential among Africans largely to the extent to which they have avoided ideology and identified themselves with popular protest or shared the burden of governmental repression. Militant nationalism inspired most of the younger, politically-minded Africans in the 1940's. But in the 1950's, ANC leaders tended to coöperate with Communists of various races, partly in response to the common threat of the loosely-defined Suppression of Communism Act of 1950, which greatly enlarged ministerial power to control the activity of suspected individuals. The Communist party, whose membership was about 2,500, about half of whom were White or Indian, ostensibly dissolved itself a few days before final passage of the Act that outlawed it.

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other important Indian leaders, especially in Natal, were not Communists.

For some years prior to the December 1956 arrests, the police had attended meetings and conducted numerous raids, taking verbatim notes and collecting evidence that was to be grist for the Prosecution in the treason trial. There were a thousand of these raids in a few months following the June 1955 meeting. "Everything still has to be correlated," the Minister of Justice told Parliament in April, 1956, "but it is expected that about two hundred people will be charged" with treason and other offenses. Presumably, the arrests occurred only when at last everything had been "correlated"—at least to the satisfaction of the Special Branch.

Yet there were numerous anomalies in the lists of accused and co-conspirators and in the permutations (described below) of the lists.[8] The most difficult to understand was the dismissal, about a year after the arrests, of Luthuli and Oliver Tambo, the ANC's second ranking official. Their dismissal seemed inexplicable when it later became clear that the ANC itself was alleged to be a party to the conspiracy, its program the essence of that conspiracy.

## *The Trial*

The South African law of high treason is imprecise, nor are its precedents directly applicable to the present case since they have arisen in circumstances of war or rebellion. It derives from Roman-Dutch common law, which is vaguer and less restrictive than English statutory definitions or the even more rigid definition in the United States constitution: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." "High Treason" in South Africa, according to the standard treatise on criminal law, "is committed by those who with a hostile intention disturb, impair or endanger the

[8] For example, some leading Communists were not included. Other Communists among the accused were dismissed or transferred to the list of co-conspirators. On the other hand, the co-conspirators in the first (but not the second) indictment included Dr. A. B. Xuma, the anti-communist President-General of the ANC from 1940 to 1949. Minor African politicians, including one African politically emasculated by Moral Re-Armament, were also involved in the trial.

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independence or safety of the State, or attempt or actively prepare to do so."[9] As in England and the United States, it is punishable by death.

The Prosecution's argument relies on manifestations of hostile intent in peacetime circumstances. The major questions it raises may eventually be answered by the Appellate Division of the South African Supreme Court. In the meantime, the court that has been hearing the case ruled on March 2, 1959, against certain contentions of the Defense. The Defense had questioned the nature of overt acts on which the Prosecution could rely in showing hostile intent. If the overt acts were spoken or written words, the Defense argued, such words in the absence of an external enemy should at the very least amount to an incitement to violence or sedition. Following the test of intent and tendency, though referring also to circumstances, the Court disagreed, "provided the words, in the circumstances, manifest the hostile intent and provided they tend toward the accomplishment of the criminal design."

The course of the trial appears bewilderingly complex because of the great bulk of the evidence, the seemingly endless series of further particulars and amendments to the indictment, the discharge without explanation of two-fifths of the accused, the split of the remaining accused into separate groups, the Court's dismissal of a new indictment against one group, and anomalies in the inclusion of some persons and exclusion of others among those arrested, discharged, or regrouped. On August 5, 1959, after describing the fairness of the proceedings as the trial's "one bright spot," the *Times* of London observed that "for the rest, darkness and confusion prevail."

Much of the delay and procedural complexity can be explained by the circumstances of an unprecedented mass trial in a legal system whose procedure is based mainly on English law. The anomalies and permutations in the lists of the accused and co-conspirators can be largely explained by legal considerations of evidence and joinder and the practical difficulties of handling a large number of defendants. The legal issues are clear, although poorly illuminated by precedent, and have become narrower as the trial has progressed. The trial has had six phases:

[9] F. G. Gardiner and C. W. H. Lansdown, *South African Criminal Law and Procedure* (Capetown, 1957), Vol. II, p. 987.

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*December 1956–January 1958.* The preparatory inquiry occupied some nine months in Johannesburg and was concluded when the presiding magistrate found "sufficient reason for putting the accused on trial on the main charge of high treason."[10] In December, 1957, however, the Attorney-General had announced that he was withdrawing charges against 61 of the accused (including Luthuli).

*August–October 1958.* A three-judge special criminal court in Pretoria heard legal argument on the adequacy of the indictment. During this phase, there were 91 accused, four having been discharged in addition to the 61. Proceedings were temporarily suspended when the Prosecution withdrew the indictment (an occurrence unparalleled in English legal history, according to Blom-Cooper).[11]

Before the indictment was withdrawn, its scope had been narrowed. Originally it had charged that the accused were guilty of high treason because they had conspired and acted "in concert and with common purpose" to overthrow the State by violence. The indictment also had included two alternative charges of contravening the Suppression of Communism Act. (These charges were concerned with the furtherance of "communism" rather than, as in high treason, acting with hostile intent to subvert the State.) The Court quashed one of the two alternative charges and ordered the Prosecution to supply additional particulars regarding the other. The Court also ordered the Prosecution to tell each accused how he was affected by the difference between allegations of "conspiracy" and allegations of "concert and common purpose." The Prosecution's response was to drop the remaining charge under the Suppression of Communism Act, leaving only the main charge of high treason, and

[10] On the inquiry, see Sampson, *op. cit.*, and, for a sentimental account, *The South African Treason Trial* (London, 1957), by Lionel Forman (a young Communist, one of the accused, who died in 1959) and E. S. Sachs. Despite the gravity of the charge, the accused were soon released in December, 1956, on bail that was nominal: £250 for Whites, £100 for Indians and Coloreds, and £50 for Africans.

[11] Bail conditions came to an end. Since then, except while detained during the emergency in 1960, the accused have been free. Their obligation to attend Court has been in response to a summons to do so. After the emergency, the Prosecution applied to the Court to order the re-arrest of the accused. The Court held it had no power to do so since bail had lapsed.

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to delete the words "acting in concert and with common purpose," leaving only the allegation of conspiracy. Both the Court and the Defense still assumed that, if conspiracy was not proved, the Prosecution would attempt to establish the guilt of each accused for separate overt acts of high treason. But on September 29 the leader of the Prosecution announced that he was relying (to begin with) on one overt act—"conspiracy pure and simple." "If the Crown fails to prove conspiracy," he said, "then all the accused go free."

During argument, the Court appeared to side with the Defense in its view that the planning of violence was necessary for treason and that the Prosecution should supply particulars of the facts upon which it relied in its inference that the accused intended to act violently. The Prosecution, on the other hand, accused the Defense and indirectly the Court of failing to coöperate in "streamlining" the indictment. The Prosecution may have avoided a quashing of the indictment by withdrawing it.

*January—June 1959.* The trial was resumed in a more manageable form under a second indictment against only thirty defendants. Under the new indictment, the issues of the trial were narrowed still further. The Prosecution's case was now, and for the remainder of the trial, limited to proving the intention of the accused to act violently. The crux, according to the particulars, was narrower yet: whether or not the policy of the ANC and its allied organizations, to which the thirty accused belonged, was violence. Therefore, although the thirty accused were distinguished by the more violent tone of their rhetoric, Luthuli and other ANC leaders who testified for the Defense were as much on trial as the thirty.[12]

Legal argument on the adequacy of the indictment was concluded, and on March 2 the Court refused to dismiss the indict-

[12] Of the 91 accused, fifteen had been members of the Communist party and thirty were Whites or Indians, but only two of the former and five of the latter were included among the thirty accused. Only a few of the African accused were ANC leaders of importance. The alleged adherence of the thirty to the conspiracy covered a shorter period of time than that covered by the original indictment (instead of October 1, 1952, the period began on February 1, 1954, running until December 13, 1956), but the Prosecution's evidence against the thirty covered the longer period and included speeches and documents of the persons originally accused and the co-conspirators. No particular conspiracy by the thirty was alleged.

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ment. The ruling was referred to the Appellate Division of the Supreme Court, and the trial was postponed. Such an appeal at this stage had no precedent in South African (and probably none in British) legal history.[18] In mid-June the Appellate Division ruled that it had no jurisdiction on questions of law arising from an unconcluded trial.

*August 1959—March 1960.* Two years and eight months after their arrest, the thirty accused were at last arraigned. Each pleaded not guilty. What was presumably the last phase of the trial began, except for appeal to the Appellate Division if the accused were convicted. For over two months, some 150 witnesses for the Prosecution testified about more than 4,000 documents, and for nearly six weeks the witness stand was occupied by Andrew Murray, professor of Philosophy at the University of Cape Town, the Prosecution's expert witness on communism. The Prosecution concluded on March 10. The Defense called its first witness a few days later and began the examination of Luthuli on March 21.

*March 21—August 1960.* The trial entered a new phase after the shooting at Sharpeville on March 21, the declaration of a national emergency, and the outlawing of the ANC. (See below, pages 236-238.) The accused (except one, who disappeared) were among some 1,900 political suspects arrested in early morning raids. (Tambo, the ANC's second ranking official, escaped and

[18] Meanwhile, an event occurred that was an aberration from the normal course of events, although it was hailed by the trial's critics at home and abroad as a victory. The official announcement in November, 1958, that the trial would proceed against only thirty of the accused had stated that the remaining 61 would also be re-indicted on a charge of treason and that their trial would begin on April 20, 1959 or afterwards. Presumably they were to be tried after the conclusion of the trial of the thirty. But on April 20, no later date having been set, the 61 appeared in court. They had been divided into two groups, each facing an indictment (covering different periods of time) that was essentially the same as that faced by the thirty in January but lacking in particulars similar to those ordered by the Court since January. Because of this failure, the Court quickly and surprisingly granted the Defense motion to dismiss the indictment. The 61 still faced re-indictment.

Speaking on May 12, 1959, about "the ordinary course of justice," the Minister of Justice said, "This trial will be proceeded with, no matter how many millions of pounds it costs. . . . What does it matter how long it takes?"

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has visited the United States.) The Court adjourned. When it met again late in April, the Defense counsel withdrew at the request of the accused after the Court had overruled protests that witnesses would be imperiled if they testified during the emergency. "We do not believe," said Duma Nokwe, an African of left-wing sympathies among the accused and the first African to become a barrister in the Transvaal, "that a political trial can be properly conducted under conditions amounting virtually to martial law."

Nokwe and others among the accused continued to examine witnesses. Many questions were asked by Mr. Justice Rumpff, the presiding judge. With the easing of emergency conditions and at the request of the accused, the Defense counsel returned on July 18. Late in August, the Defense for the first time challenged the impartiality of one of the judges, Mr. Justice Rumpff, on the ground that the cumulative effect of his interventions gave the impression of unfairness. The judge rejected the challenge, and the Court granted permission to appeal if the verdict were guilty.

*Since September 1960.* With the ending of the emergency on August 31 (though the ANC was still outlawed) and the release of the accused from jail on that day, the proceedings were almost back to normal. The Defense closed its case on October 7. On November 7, the Prosecution began the final argument.

### *The Prosecution*

The Prosecution's argument has a simplicity so grand that one can understand the exasperation with the Defense occasionally shown by Oswald Pirow, Q.C., the chief prosecutor.[14] "The essence of the crime" of high treason, said Pirow, was "hostile intent." Such intent was evident in the demands of the accused for full equality. They knew, the second indictment alleged, that to

[14] Pirow, one of the ablest men in South African public life, had been recalled from semi-retirement to lead the Prosecution. As Minister of Justice in 1929 and the early 1930's, he had been a severe opponent of left-wing activity. During the War, which he opposed entering, he founded the New Order, an authoritarian group opposed to parliamentary democracy. He died in October, 1959.

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achieve the demands of the Freedom Charter "in their lifetime" would "necessarily involve the overthrow of the State by violence." Or "in any case the accused must have known," said Pirow, "that the course of action pursued by them would inevitably result in a violent collision with the State resulting in its subversion."

The Prosecution found the hostile intent of each accused in his adherence to a conspiracy. The accused believed, said Pirow, that the Congress movement was "the vanguard" of the so-called National Liberatory Movement in South Africa. "The essence of the case" was the fact that the Liberatory Movement was part of an international communist-inspired movement "pledged to overthrow by violence all Governments in non-communist countries where sections of the population did not have equal political and economic rights." The importance of communism in the trial, said, Pirow, was that it illuminated the nature of the conspiracy and the conspirators' intent.

How did the Prosecution seek to prove the existence of a treasonable conspiracy? By "an irresistible inference," said Pirow, from the history of the world-wide communist movement and the history of the extraparliamentary opposition in South Africa. Pirow admitted that the Prosecution's case was "intricate" and included "voluminous particulars"—all kinds of evidence of spoken and written words, attendance at meetings, possession of documents, and so on—many of which appeared innocent. Although the Prosecution based its case on one overt act of conspiracy, these particulars also were overt acts, done "in pursuance and furtherance" of the conspiracy, said the indictment, and necessary as proof of individual adherence to it. The "unifying element" was the Liberatory Movement. No facet of the case could be isolated from it, and all the activities of the accused were referable to it. In short, Pirow argued, there was no doubt about the existence of a treasonable conspiracy if one looked at each fact in the light of all the facts.

The context in which each fact should be seen was given its most comprehensive statement by Pirow in his opening address on August 10, 1959, from which the quotations above are taken. The address was, in part, an analysis of a document called the "Summary of Facts" that served explicitly as a key to the documentary evidence. By 1959 the documents had been reduced

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from nearly 10,000 to about 5,000, and the number of accused was down to thirty. Yet Pirow's argument and the "Summary" taken together encompassed world communism at least since 1949, the extraparliamentary movement in South Africa since 1952, other events occurring "many years" prior to the period covered by the indictment, and the activities of persons not listed even among the many alleged co-conspirators. Thus, the Prosecution linked the African National Congress, the World Peace Council, and opposition to the foreign policies of Western European countries and the United States. Also said to be communist-inspired was the entire range of the tactics of protest, including agitation over minor grievances. All these techniques, said Pirow, were regarded by the accused as a "prelude to the ultimate revolutionary offensive."

By looking at all the facts, one also found the essential element of hostility. "Insistence upon violence," said Pirow, "runs through the case in an unbroken thread." Especially in the early stages, the Prosecution suggested that advocacy of bloody violence was not necessary in establishing hostile intent. But the Prosecution based its second indictment on such advocacy and selected thirty accused whose speeches, said Pirow, "bristle with references to the spilling of blood."

The key document was the Freedom Charter, the basic Congress manifesto. In the Prosecution's argument, however, the accuseds' intent illuminated the Charter more than the Charter illuminated their intent.[15] The Prosecution also relied upon

[15] At the close of the preparatory inquiry in January, 1958, Pirow had described the Charter as communist on its face and had treated it as the cornerstone of the Prosecution's case. The full text was printed in the first indictment. In later stages, however, the Charter was given less emphasis. During 1958, a statement of testimony to be given by a foreign expert on communism said about the Charter only that "it is most probably Communist in origin." The second indictment specified five Charter demands that were concerned mainly with public ownership and redivision of the land. Pirow's opening address in August, 1959, stressed that the accused understood the Charter as "a revolutionary document," embodying aims to be achieved "in their lifetime" and therefore involving "the complete smashing of the entire State apparatus in its present form." In answering a request for particulars, the Prosecution had alleged earlier that "in their lifetime" meant five years from June 26, 1955, the date of adoption of the Freedom Charter. The allegation was withdrawn later.

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quotations from speeches and publications that leave nothing to the imagination. In referring to motivations that have deeper and wider roots than ideological communism, Pirow said that the accused were "inspired by communist fanaticism, Bantu nationalism and racial hatred in various degrees." The observer of the trial faces no problem in selecting a lurid example of advocacy, whatever may be its inspiration, because one quotation stands unchallenged as the prime exhibit.

It is from a speech made by Robert Resha, chief of the ANC's so-called Freedom Volunteers. Resha's speech can virtually be duplicated by many public speeches, but it has a sensational quality because it was made thirteen days before the arrests at a secret meeting recorded by a hidden microphone. "When you are disciplined and told by the organization not to be violent, you must not be violent," Resha said, but "if you are a true volunteer and you are called upon to be violent, you must be absolutely violent, you must murder, murder."

For illumination of intent, the Prosecution looked also at the circumstances in which words were uttered. Intent "or what could reasonably have been intended," said Pirow, could partly be determined by "gauging the probable reaction of the people who formed, for example, the bulk of the audience at meetings of the ANC." The Prosecution had evidence to demonstrate that "the bulk of the country's non-European population is likely to respond more quickly, more irresponsibly, and more violently to illegal agitation than would be the case with a group whose general standard of civilization is higher."[16]

The Prosecution also looked at intent in the penumbra of circumstances of clear and present danger. Adducing such circumstances was not necessary to the legal argument, but the gravity of the charge appears to have required the justification of imminent revolt. Thus, Pirow argued that the situation at the time of the arrests was "explosive."[17] Nevertheless, intent

[16] The Prosecution did not introduce such evidence.

[17] An allegation in the first indictment that the words of the accused "did in fact" promote discontent and hostility was dropped, following a request by the Defense for particulars. No evidence of violent actions that had been described in detail during the preparatory inquiry (burning of schoolhouses, wrecking of buses, and so on) was introduced during the trial. The "hostile and overt acts" alleged in the indictment constituted, as noted above, the entire range of extraparliamentary agitation and tactics.

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remained of the essence. The second indictment stressed incitement and preparation for violence but did not allege that any consequences resulted that constituted an attempt to overthrow the State. Only in passing did Pirow argue in his address that the accused sought to exploit "susceptibilities" and "passions" and "succeeded in so doing."

### *The Defense*

The Defense confronted the Prosecution's most sensational exhibit when the secret recording of the "murder, murder" speech was played in the courtroom on May 18, 1960, in the presence of Luthuli. Luthuli, a man of imposing dignity, denied that the speech expressed ANC policy. Earlier he had testified that since the ANC was an "omnibus" organization, whose members ranged in opinion from conservative to communist, he was not surprised that deviationist speeches were made. But non-violence was the ANC's basic policy, and the ANC in practice was a restraining influence. The "militancy" of the 1949 "Program of Action" meant work stoppages, non-violent defiance of unjust laws, and other demonstrations intended to draw attention to African suffering. No one at the branch or national level had suggested adoption of a policy of violence. If someone had, said Luthuli, he would have opposed it on personal and practical grounds: his Christian belief and his belief that violence would be suicidal. Furthermore, the examples of India, Ghana, and Nigeria had shown him the efficacy of non-violence.

Resha himself admitted later that he had made the speech but insisted that it was clearly outside ANC policy. When questioned by a senior member of the ANC he had explained that he was merely trying to give an example of extreme discipline. He had sometimes expressed doubts about the ANC's policy of non-violence, he said, but agreed with it in his calmer moments.

Luthuli's testimony supported the conception of the ANC held by the Defense: the ANC was a loosely-organized movement encompassing many points of view but held together by common grievances and aspirations and officially committed to non-violence. Subtle but sharp differences from the approach of the Prosecution distinguished the approach of the Defense to the facts in the case. For the Prosecution, African grievances had been exploited by agitators. Realistically, in the estimation of

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the Prosecution, the primary significance of African aspirations lay in the means which they implied in the circumstances of South Africa. For the Defense, African grievances were to be expected in the circumstances of South Africa, and it was realistic to accept the fact that moderate and responsible African leaders saw in the Freedom Charter, as in the Universal Declaration of Human Rights, a vision of the future. Where the Prosecution stressed the power of the accused to start a conflagration, the Defense stressed the power of the State and the inability of the accused to do more than demonstrate their disaffection. For the Prosecution, the "murder, murder" speech was a revelation of intent made by a leader in circumstances in which the usual camouflage of non-violent affirmation was unnecessary. For the Defense, the speech was an example of irresponsible and rather incoherent demagoguery by a flamboyant individual, for whose words no accused could be held responsible in the absence of convincing evidence of endorsement. For the Prosecution, sophistication about communist-inspired conspiracy required one to judge the complicity of an individual by relating his activity to a complex pattern of seemingly innocent facts. For the Defense, the Prosecution's attitude from the outset had been, according to I. A. Maisels, Q.C., "Let's throw in everything the police have been able to find and see what comes out at the end."[18] In place of vague allegations, said Maisels, each individual among the accused was entitled to particulars that informed him precisely about the nature and extent of his adherence to the alleged conspiracy.

In short, the Defense denied the existence of a true conspiracy motivated by hostile intent. It denied the Prosecution's assumption that no middle ground existed between the ballot box and treason. The activities of the accused, it maintained, were characteristic of extraparliamentary and non-violent movements in countries that excluded a large section of the population from

[18] Maisels, perhaps the most brilliant advocate in South Africa, is the anti-communist leader of a Defense team, only two of whose members (A. Fischer, Q.C., and V. C. Berrange) have strong communist sympathies, which they have not disguised. Legal fees for the Defense, set far below the normal scale, are paid by the Treason Trials Defense Fund. The Fund is controlled and sponsored mainly by White liberals, churchmen, and other opponents of the government. It has issued the mimeographed *Treason Trial Bulletin* irregularly since February, 1958.

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the political process. Such movements tended to be amorphous and undisciplined. Their leaders, more than the leaders of Western political parties, could not be held accountable for everything said by their followers. The Prosecution had selected for its case only a small proportion of all the speeches made. Furthermore, the Defense suggested, the cohesiveness of the alleged conspiracy was doubtful in the light of the grab-bag nature of the arrests, the discharge later of major leaders, and the presence of minor personalities among the thirty accused.

These interpretations of the political activity of the accused underlay the argument of the Defense, but its major effort lay in challenging the Prosecution's legal argument and the relevance of each piece of evidence. The Defense also challenged the reliability of reports of speeches. In leading an expert legal course marked by thoroughness and tenacity, Maisels acted in contrast to the course followed during the preparatory inquiry. The leader of the Defense at that time had denounced the proceedings as politically motivated and demanded that the law be interpreted in the framework of "democracy" rather than "fascism." Under Maisels, major legal questions have been raised. How much "concert and common purpose" is required to constitute conspiracy? Can conspiracy exist without agreement and be known by inference? Can intent constitute treason in the absence of war or rebellion? Can hostile intent be demonstrated by spoken or written words that fall short of incitement to violence? How strictly must one construe the criteria for proving adherence to a conspiracy?

### *The Trial's Political Meaning*

Without imputing motives to the government, one can appreciate the logic of the trial. By it, the accused are tied up; those who might be accused are intimidated; the nature and breadth of the extraparliamentary opposition is demonstrated at home and to the world; and the demonstration is performed in accordance with the forms prescribed by a highly respected judicial system. The government is vindicated if it wins. If it loses, it can blame defeat on the law's inadequacy and extol the meticulous standards of the judiciary. On the final decision it can base either further prosecutions or the need for new legislation.

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Nevertheless, the trial has been of little value to the government in its appeal to the White electorate, of doubtful value in dealing with the non-White opposition, and an embarrassment abroad. The Prosecution's failure to make dramatic disclosures at an early stage; the facelessness, for most Whites, of the body of the accused; the tedious, complex, and protracted nature of the proceedings; and the setbacks to the Prosecution—all these have made it difficult to exploit the trial politically. Whites generally have found the affair a murky business, characterized either by Defense technicalities or by governmental fumbling yet probably directed at fire under the smoke. Partly because of South Africa's strict *sub judice* rules, the press has done little to clarify the trial's issues for the public.

The trial has immobilized or preoccupied many leaders of the African National Congress and diverted them from large-scale campaigns of protest. It has probably boosted the prestige of the ANC's leaders, strengthened solidarity with multi-racial allies, and blurred the distinction between long-standing aspirations and communist aims. It has hastened the emergence of younger leaders. But by partly isolating some of the leading proponents of multi-racialism and gradualism, the trial has also weakened resistance to rising pressures for greater militancy, racial assertiveness, and identification with pan-Africanism. It has therefore put the ANC's leaders on the defensive on two fronts. In the longer run, however, it probably has contributed to the polarization of Afrikaner nationalism and all anti-government Africans.

The trial has partly drained the energies of White liberals, who have accepted the burden of obligation to provide for the Defense and care of the accused. The liberals include members of the Liberal party, in particular, which has competed with Whites on its left in seeking African acceptance. Meanwhile, White and Indian pro-Communists, sitting day after day in the unsegregated dock of the segregated courtroom, have found the trial itself a means of closer identification with the African opposition.

Despite the Prosecution's effort to stress communist influence, hardly any foreign observers or editorial commentators have accepted the trial as a justifiably anti-communist proceeding. It has failed to promote acceptance abroad of the claim of Dr. Hendrik Verwoerd, the present Prime Minister, that South

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Africa is the West's "best friend and most faithful ally on the African continent."[19] Comment has mainly impugned the government's motives and sympathized with the tribulations of the accused. In a judgment that is widespread, the Manchester *Guardian* said on November 15, 1958, that the trial was "a political trial, pursued with pitiless pertinacity."

Foreign criticism has been directed at the following: the injustice of prolonged delay and uncertainty and the possibility that the trial (and successive trials) can be practically interminable; the near-impossibility of dealing fairly with individuals in a mass trial in which no single act of conspiracy nor any act of violence is alleged; the vagueness and openness to abuse of the definition of treason; the carelessness in preparing evidence and apparent arbitrariness in selecting the accused and co-conspirators; the absence of any revelations about conspiracy or any convincing evidence of attempt to overthrow the government; and the severity of personal and family hardship as a result of delay and uncertainty and inadequate provision for the accused or compensation for the dismissed. No one, to the writer's knowledge, has made the charge that the trial is staged or rigged. The regularity of the trial's procedure has been highly praised but sometimes has been regarded as meaning little to the individual accused.[20] The judges have also been praised, although sometimes in an invidious context.[21]

The trial poses two far-reaching questions, or one question seen from two vantage points. For unenfranchised and dissatisfied non-Whites, the question is: does the breadth of the Prosecution's argument leave open any extraparliamentary outlets for

[19] *The Times* (London), March 28, 1960, p. 10.

[20] Dean Griswold has summarized the difficulties of doing justice in a mass trial. *The Times* (London), September 25, 1958. Supporters of the Government have occasionally cited his favorable judgment on the fairness of the proceedings, although he has also described "the underlying legal situation" as "deeply unsound."

[21] The *New Statesman and Nation* of April 25, 1959 praised the judges for dismissing the indictment against the 61 accused, again showing, it said, that "the judiciary in an autocratic country may sometimes be prepared to put law before political expediency."

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free speech or agitation?[22] For Whites seeking contact with these non-Whites, the question is: does the involvement in the trial of men like ex-Chief Luthuli and Professor Matthews mean that contact is possible only with Africans who are in basic agreement with official policy?

Regarding the latter question, it appears that all outlets and contacts not approved by the government are subject to being closed. Meanwhile, White anxiety about race relations has grown and with it, intellectual ferment and open-mindedness among both supporters and opponents of the government. Although their premises vary widely, these Whites base their hope for eventual African consent on the preliminary step of African consultation. The trial, in showing with clarity the government's attitude toward leaders like Luthuli and Matthews, has cast a cloud on White efforts to promote consultation with such men.

Especially notable efforts to attain this end were made by pro-government Afrikaner intellectuals who are members of the South African Bureau of Racial Affairs (SABRA), after the National party won a third term of five years at the general election of April, 1958. Despite Dr. Verwoerd's opposition to contact with outside official channels, SABRA leaders have held an unprecedented series of private meetings with a wide cross-section of articulate Africans. These included Luthuli and others involved in the trial and African nationalists who opposed the ANC's alliance with White and Indians and were out-

[22] By requiring the presence of hostile or violent intention, the Prosecution may argue that it leaves free speech for all, regardless of color, unimpaired. Although quoting the dictum of the highly respected Mr. Justice Schreiner, that "there is no intermediate course between constitutional action through the ballot box and treasonable action through illegal use of force," the Prosecution affirms that changes "however radical and far-reaching" may be sought by "legitimate and constitutional means." Presumably such means include speech that is intended to influence those who do have the vote. For critics of the government, however, the area between ballot box and treason is risky to enter. Its limits may be easily constricted under the historic "intent and tendency" test, which the Prosecution follows although it talks also of circumstances of clear and present danger. Nevertheless, Africans are not likely to abandon what the Prosecution describes as "a long and flexible process involving boycotts, strikes, civil disobedience and stoppage of work." Such pressures go beyond speech and may appear to be advocacy of "revolution," which the Prosecution defines as "the consummation of" the process described above.

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spokenly anti-communist. The latter formally established the Pan-African Congress (PAC) in April, 1959.

On March 21, 1960, "the old book of South African history was closed at Sharpeville," Mr. Paul Sauer, the senior member of the Cabinet, has said.[23] On that day the police killed 69 Africans and wounded about 180 in a crowd that was demonstrating its support for a new defiance campaign against the carrying of passes and, according to the police, was threatening to overrun them. The campaign that occasioned these and later disturbances was initiated by the PAC, headed by Robert Sobukwe. After the shooting, Luthuli called for a stay-at-home Day of Mourning and made the defiant gesture of burning his pass.

The government, seeking a showdown, took action during the next few days that eclipsed the trial. In assuming emergency power for the first time under the Public Safety Act of 1953 and in freeing itself from the restrictions of habeas corpus, the government made South Africa a quasi police state. By the enactment of legislation that outlawed both the ANC and the PAC, the government took one of the major actions that probably would have followed the successful prosecution of the trial. By arresting about 1,900 persons in early morning raids, the government, acting in a less discriminating way than in 1956, cracked down on political suspects whose names were apparently on a standing list but against whom no case or evidence was prepared. Included among those indefinitely detained were most if not all of the persons arrested in December, 1956, and also members of the once-existent Communist party who had not been arrested for treason (presumably because of lack of evidence) after 1950. By jailing leaders of the anti-communist Liberal party without explanation and for the first time, the government acted in a manner predicted by critics who had seen in the Prosecution's argument danger to all opponents of official policy. And by convicting the PAC leaders during the first six weeks after Sharpeville for incitement and by imposing penalties ranging from whipping to three years in jail, the government again demonstrated its ability to act effectively in cutting down African leadership.

[23] *The Star* (Johannesburg), June 2, 1960, p. 23. For background and events to May 24, 1960, see *Days of Crisis in South Africa,* A Fact Paper, and *Addendum,* compiled by Muriel Horrell, South African Institute of Race Relations, Johannesburg.

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The trial took on a new importance. The government, maintaining that a communist-inspired conspiracy was behind Sharpeville, looked upon the trial as a partial substitute for the judicial inquiry demanded by the parliamentary opposition. No major commission of inquiry will be appointed before the trial is concluded, the Prime Minister said on May 20, 1960, the last day of Parliament, ". . . as this trial itself has in part the character of an inquiry into the causes of disturbances."[24] Earlier, in explanation of the "reign of terror which threatens public safety," the Minister of Justice quoted from Resha's "murder, murder" speech and other evidence for the Prosecution, adding, "I shall . . . suppress the names of the speakers, in view of the fact that there is a case pending."

Meanwhile, leading Whites, including supporters of the government and representatives of commerce and industry, made the most urgent appeals for "consultation" with Africans ever heard in South Africa. In Parliament, a Liberal party spokeswoman gave Luthuli, Matthews, and Sobukwe as examples of "chosen leaders." In reply, the Minister of Bantu Administration and Development identified Luthuli as one of the "agitators" who incited revolt and then issued "pious statements" in favor of non-violence. The ANC and the PAC, according to the Minister of Justice, had a combined membership of only about 70,000—"a small coterie of terrorists" who want "our country."

The meaning of treason has grown as threats to White supremacy have appeared to become more serious. Following the end of the emergency on August 31, the surface of South African life resumed the appearance of normality, including a resumption of extraparliamentary activity by the Congress movement. The ANC, however, remained underground, where it may be joining forces with the PAC. Proposals to consult with ANC-PAC leaders tended to be characterized by the government as traitorous. The charge of treason is likely further to pervade and dampen politics, especially as foreign pressures deepen White anxiety about White supremacy and lend aid and comfort to non-

[24] For this and other statements below by members of Parliament, see Union of South Africa, *House of Assembly Debates* (Cape Town), 1959: columns 5673-5675; 1960: columns 4210-4211, 4302-4303, 4306-4310, 4319, 4330, 8343.

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Whites.[25] But rational and uninhibited political debate is hardly to be expected in circumstances in which the stakes are believed to be life or death. A few days after Sharpeville, the Minister of Justice quoted a speaker for the ANC Youth League as having said, "De Wet Nel [Minister of Bantu Administration] must bear in mind that the day we achieve our freedom we shall charge him with high treason."

## *Conclusion*

Three differing conclusions may be drawn about the trial's political importance, each of which has some validity. The Afrikaner Nationalist sees the trial as necessary. It stigmatizes subversive forces that are undermining racially separate development, the only policy that can prevent the submergence of Whites by Blacks. The liberal or multi-racialist sees the trial as tragic. It excommunicates moderate forces with whom Whites must consult if they are to bring about the conciliation and eventually win the consent that is the only hope for multi-racial peace. The realist or defeatist sees the trial as symptomatic. It epitomizes the conflict of Afrikaner nationalism and African nationalism—or more ominous, White racialism and Black racialism—forces that cannot be separated or reconciled.

The Prosecution's insight is elementary: the Freedom Charter undoubtedly undermines White supremacy and, given the facts of White power, any attempt to realize its aims in the lifetime of Luthuli would require or bring on violence. A trial for treason is logical. If succeeded by what Mr. Justice Holmes has described as "persecution for the expression of opinions," this development would be "perfectly logical." "If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition."

But for the observer who cannot avoid the conclusion that separate development is illusory, consultation with Africans appears urgently necessary. To be effective, it can hardly exclude African leaders like Luthuli who are among the accused

[25] *Dagbreek en Sondagnuus*, the Nationalist Sunday newspaper in Johannesburg, said on July 31, 1960, that advocacy of "intervention" or "take-over" by the United Nations [the policy of Alan Paton] was "equal to high treason" and should be made punishable as such by Parliament.

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and alleged co-conspirators (or who are among those probably destined to be accused). If the writer may claim the parliamentary privilege exercised by Ministers of the South African Crown and judge a matter that is *sub judice*, Luthuli is a moderate if moderation means genuinely non-violent in intent. But if it means willingness to accept less than fairly rapid movement toward full political equality in an integrated economy, "moderation" among leaders like Luthuli has been a myth for perhaps a decade.

The trial, in short, epitomizes the alienation of Whites in political power from Africans who demand a share and eventually control of that power. Is it possible to foresee "graceful acquiescence" by Whites? (This is the alternative to "annihilation" in the judgment of the Roman Catholic Archbishop of Durban.) Visiting the Union in June, 1960, C. W. de Kiewiet received the "impression . . . that the point of no return has not yet been reached in South Africa's internal relations."[26] If White good will and power and the tactic of trials can forestall movement to the point of no return, perhaps South Africa can have a period of grace in which new generations of Whites and Blacks may arise between whom there can be accommodation.

Meanwhile, in 1961, the Special Court or the Appellate Division may finally reach a judgment for the Defense. The irrelevance of such a judgment to the larger contest of political and racial forces suggests the incidental nature of the trial, a dramatic and continuing sideshow, notable for its removal of certain major actors from the main arena.

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Note: The trial came to an end suddenly on March 29, 1961, while the Defense was in the fourth week of its final argument. Mr. Justice Rumpff announced that the three judges were unanimous in finding the twenty-eight accused not guilty. (One had died earlier in the month.) The Court found it impossible, he said, to conclude that the ANC had "acquired or adopted a

[26] *The Star* (Johannesburg), July 7, 1960.

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policy to overthrow the state by violence—that is in the sense that the masses had to be prepared or conditioned to commit direct acts of violence against the state." The Court would prepare a full statement of its reasons. *The Times* (London), March 30, 1961, p. 12. Since the verdict was on a question of fact and not on law, the Prosecution cannot appeal.

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# THE SUNAKAWA CASE

## ITS LEGAL AND POLITICAL IMPLICATIONS

IN March, 1959, the Tokyo District Court acquitted seven defendants of the charge of trespassing on an American air base near a place called Sunakawa. The court held that the stationing of the United States forces in Japan violated the "war renunciation" clause of the Constitution and that therefore the law providing special protection to their bases was invalid. This verdict at once caused a public sensation, inasmuch as it was diametrically opposed to the position of the Kishi Government. The state, through its public procurators, appealed to the Supreme Court which, on December 16, 1959, reversed the original judgment and remanded the case to the District Court for retrial. The Supreme Court ruled that the stationing of the United States forces was consistent with the Constitution of Japan.

### I

As a result of the "Sunakawa Case" the significance of judicial review, the power of the courts of law to determine the constitutionality of the acts of the legislative and executive branches of the government, must have become clear to every thinking Japanese, regardless of whether he liked or disliked the decision. In the United States this power has had a long historical evolution and, though challenged as "judicial supremacy," has survived as a dynamic expression of the rule of law at which our democracy aims. In Japan, however, it has not been a time honored institution. When the new Constitution of Japan was enacted in 1946 during the Allied occupation, the American pattern was recognizable in a strong separation of powers. The judiciary was freed from the tutelage of the executive and made an independent third branch of the government. To crown this elevation, the fathers of the new charter entrusted the Japanese judges with the power of judicial review which their American colleagues had acquired and developed through their own efforts. This gift and the sudden change in their status presented the Japanese judges with novel and difficult tasks. Since the public had been accustomed to look at them as government employees, the process of bringing home to the people the new position of



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the judges and the mission of the courts as guardians of the Constitution has been slow. The courts themselves performed their responsibilities with independence, moderation and dignity. However, the Supreme Court until now has never invalidated any statute nor have any of its decisions affected the life of the nation to such an extent that the people could grasp what a powerful instrument is represented by judicial review.

The Sunakawa trial raises a variety of fascinating problems for the student of political affairs as well as for the lawyer. It confirms the truth that in the function of judicial review, legal interpretation often cannot be separated from political judgment. It is this very combination which makes the judiciary a potent factor of policy determination within the government. Aside from legal knowledge and impartiality, judicial review requires mature experience, a great deal of political understanding and that personal courage without which statutory guarantees of independence mean very little. Obviously, the members of the highest tribunal whose judgment is final must rise to true statesmanship.

The decision of the Supreme Court received front page publicity due to its expected effect upon both Japan's foreign relations and domestic politics. Meanwhile, the deplorable drama, which culminated in the cancellation of President Eisenhower's visit to Japan, in the resignation of Prime Minister Kishi, and in the vicious attack on his life, has overshadowed this judicial event. Nevertheless, the verdict remains extremely significant. Analysis of its political implications must necessarily be preceded by the procedural story of the trial.

## II

The facts of the case are not in dispute. In order to extend a runway on the United States air force base at Sunakawa, the procurement of additional private land was agreed upon between the United States forces and the government of Japan. In July, 1957, on the occasion of a survey of the land, more than a thousand demonstrators, consisting of various groups in opposition to American bases in Japan, including members of labor unions and student organizations, gathered early in the morning in front of the fence of the air base and loudly protested against the survey. Some of the demonstrators broke down part of the

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fence, and seven persons entered through the opening without permission. They were indicted for violation of Article 2 of the Law for Special Measures concerning Criminal Cases (hereinafter referred to as the Special Criminal Law) which was enacted to implement the Administrative Agreement between the United States and Japan. The latter constitutes a status of forces agreement under the Security Treaty between the two nations.

On March 30, 1959, a division of the Tokyo District Court, composed of three judges and presided over by Judge Akio Date, found the seven defendants not guilty and acquitted them.[1] After stating first, on the basis of overwhelming evidence, that the defendants in fact committed actions punishable under Article 2 of the Special Criminal Law, the court argued as follows: This Article, designed to protect the United States forces, facilities, and areas, makes it a criminal offense to trespass on any such places the entry to which is prohibited. The penalties provided in this special law are heavier than those imposed by the general law to protect Japanese property. The difference may be explained by the fact that the law considers it especially important to maintain peace within the facilities and areas of the United States armed forces and by the ensuing desire to give them greater protection than the general public. This privileged treatment may be unobjectionable, in the opinion of the court, if the stationing of the United States forces in Japan is not in conflict with the Constitution of Japan. Otherwise Article 2 would represent an unjustified discrimination in violation of Article 31 of the Constitution, namely the principle that no person shall be deprived of life or liberty nor shall any other criminal penalty be imposed, except according to procedure established by law. Departing from that premise, the court then went into an interpretation of Article 9, the war renunciation clause of the Constitution, which reads:

> Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat and use of force as means of settling international disputes.
>
> In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

[1] For an English translation of the District Court decision see the 1960 edition of *The Japanese Annual of International Law*.

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The "Date decision," as the verdict of the District Court has been called popularly, points out that this clause, while not denying Japan the right of self-defense, prohibits war and the maintenance of war potential even for self-defense, not to mention war of aggression. This prohibition, according to the court, derives from the will of the people, as expressed in solemn stipulations of the Preamble to the Constitution, such as the resolution of the people that "never again shall we be visited with the horrors of war through the actions of our government," the people's "desire for permanent peace," their "deep consciousness of the high ideals controlling human relationships," and their willingness to "preserve their security and existence, trusting in the justice and faith of the peace-loving peoples of the world." Thus the Japanese people, the verdict declares, proved not only their sincerity in "self-reflection" and their honest will to discontinue the militaristic and aggressive policies followed by Japan in the past but also their high ideals and strong determination to be the pioneer of eternal world peace.

As the only concession to the right of self-defense, the court stated that there could be resort to military assistance by international police forces of the United Nations Organization or to whatever other remedy its Security Council may consider appropriate.

The court called for an interpretation of Article 9 according to the spirit of the Charter rather than "superficially grasping the phraseology." Moreover, the court explicitly rejected as political the argument that the stationing of the United States forces was imperative for the defense of Japan in order to avoid a military vacuum after the termination of the Allied occupation.

Thereupon, the court examined the relationship of that stationing and Article 9. According to the Security Treaty, the court stated, the United States may use its forces not only for the defense of Japan, but also to contribute to the maintenance of international peace and security in the Far East, and in the Administrative Agreement Japan grants the use of the facilities and areas necessary to carry out these purposes. The right of the United States to deploy its forces in areas outside Japan if it regards this as strategically necessary for the maintenance of international peace and security in the Far East could, in the view of the court, involve Japan in an armed conflict which has no direct bearing on Japan. Therefore, the government's act

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of permitting the stationing of the United States forces in Japan may run counter to the spirit of pacifism in the Constitution.

Aside from this point, however, the court held that even the use of these forces for the defense of Japan would be inconsistent with Article 9. While the Security Treaty does not explicitly obligate the United States to defend Japan against armed attack, the court argued, it appears highly probable in the light of the whole relationship between the two nations that the United States would immediately employ its forces at the request of the Japanese government in the event of such an attack. As a prelude to that employment, Article 24 of the Administrative Agreement provides that in the event of hostilities in the area of Japan the two governments shall immediately consult together with a view to taking necessary joint measures for the defense of the area.

The court admitted that Japan has no right of command or control over United States forces, but emphasized that their stationing was also the result of an act of the Japanese government since it was based on an agreement between the two governments. Consequently, Japan's consent must be deemed tantamount to its maintaining war potential, as prohibited under paragraph 2 of Article 9. Though indicating awareness of Japan's international treaty obligations, the court saw no justifiable reason, from the point of view of the domestic law, for giving privileged protection to the facilities and areas in use by the United States forces. Consistent with its legal point of departure, the court ruled that Article 2 of the Special Criminal Law violated Article 31, the due process of law clause of the Constitution, and was therefore null and void. The defendants who had been charged with an offense against Article 2 were held not guilty and acquitted.

## III

The government appealed this decision directly to the Supreme Court, omitting the intermediate appellate instance of the high court. This so-called jumping appeal is available when legal issues alone are involved. Following in this respect the continental system of criminal procedure, the Japanese law permits the state to appeal to a higher court even a decision of acquittal of a defendant. Since the government was eager to

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see the Date decision reversed as soon as possible, its Supreme Procurator's Office, highest state prosecution agency, feverishly prepared a voluminous justification of the appeal, while a defense council, initially consisting of approximately 280 attorneys, was organized, presumably by interested groups. Its leader was Shinkishi Unno, prominent senior lawyer, Socialist, and Director of the Japanese Civil Liberties Union. Interestingly enough, a well known and able retired justice of the Supreme Court had joined the formidable defense battalion.

While the prosecution and defense worked out their strategy, the Japanese press engaged in a lively discussion of the Date decision, in which the leading metropolitan newspapers took a somewhat cautious and waiting attitude. The hope was generally expressed that the Supreme Court would render an unambiguous decision covering the question of the constitutionality of Japan's own armed services, officially called self-defense forces. The debate of legal scholars was of particular interest. The law magazine *Horitsu Jiho* published a special number in May, 1959, exclusively dealing with the Sunakawa case. It contained the analyses of various university professors, who were about evenly divided in their opinions on the merit of the Date decision. Toshio Miyazawa, professor emeritus of Tokyo University and probably at present the most outstanding Japanese scholar of constitutional law, long before the Sunakawa trial had expressed the noteworthy idea that the United States forces in Japan performed functions comparable to those of United Nations forces and that their stationing in that country was therefore constitutionally unobjectionable.

The trial involved complex legal problems, indeed, for which there was no judicial precedent. What would determine the Supreme Court's choice among the divergent answers offered by the legal experts? Professor Kenzo Takayanagi, chairman of the Constitution Research Council which the government appointed to study the need for a revision of the Constitution, called for a high-level political, yet supra-partisan decision, based on an understanding of current international relations rather than on textual interpretations.[2]

The trial progressed at a speedy pace and was conducted in a relatively calm atmosphere without disturbances and mass dem-

[2] See *Asahi Evening News*, May 5, 1959 (English language edition).

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onstrations. Between September 7 and 18, 1959, the court held six sessions in which both parties were given ample opportunity to argue their positions. On December 16, 1959, the Supreme Court handed down its judgment rescinding the Date verdict and remanding the case to the Tokyo District Court for retrial. With regard to the legal issues the verdict of the Supreme Court is final and binding on the lower court, which in retrial will be concerned mainly with the question of penalties. The judgment of the Supreme Court was unanimous but there was variation in the reasoning by which it was reached. Seven associate justices wrote "supplemental opinions," elaborating on or expressing disagreement with the reasoning of the majority.[3]

The majority opinion may be summarized as follows: In its first part the decision generally examines the meaning of the first sentence of paragraph 2 of Article 9 of the Constitution. It points out that this clause was enacted because of the people's determination, stressed in the Preamble, never to have war again by means of government action but to secure everlasting peace. As a result of the Potsdam Declaration after the defeat in the war, the nation had reflected on the militaristic acts which it committed in the past. In conjunction with the spirit of international coöperation, Article 9 is an embodiment of the concept of pacifism which characterizes the Constitution of Japan. The court held, however, that "it goes without saying that this does not in the least negate the inherent right of self-defense of this country as a sovereign state." According to the court, the principle of peace cannot be identified with defenselessness and non-resistance, in view of guiding principles in the Preamble, such as the people's desire to occupy an honored place in an international society striving for the preservation of peace and the banishment of tyranny and slavery, oppression and intolerance, and the affirmation that all people of the world have the right to live free from fear and want. The court concluded that Japan, in the exercise of its inherent right of self-defense, can take the measures necessary for the preservation of its existence, peace and security. The Japanese people themselves have deter-

[3] For an English translation of the complete judgment, including the supplementary opinions, see *Judgment Upon the Case of the So-Called "Sunakawa Case,"* published by the General Secretariat, Supreme Court of Japan, 1960, as No. 4 of the series of prominent judgments of the Supreme Court upon questions of constitutionality.

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mined, the court stated, not to maintain a war potential in the meaning of Article 9 but to supplement any deficiency in their capability of defense by trust in peace-loving nations. In doing so, Japan is not restricted to seeking military assistance from organs of the United Nations, as the original judgment of the lower court maintains, but is free to choose whatever method or means are appropriate in the light of the actual international situation. Therefore, the court ruled, Article 9 does not prohibit Japan from requesting security guarantees from other countries.

Exploring the "legal intent" of Article 9, the court held that the prohibitive part of it aimed at preventing Japan from maintaining its own war potential under its own control and command, and thereby instigating a war of aggression which had been renounced forever in the first paragraph of the Article. Leaving explicitly open the question of Japan's own self-defense forces and their constitutionality, the verdict construes the prohibition as directed against the war potential of Japan but not against foreign armed forces stationed in that country.

In its second part, the decision defines the question whether the stationing of the United States forces in Japan is in conflict with the purport of the Preamble and Article 9, as well as with paragraph 2 of Article 98 of the Constitution which calls for faithful observation of the treaties concluded by Japan. Inasmuch as, in the opinion of the court, the stationing of the American troops is predicated upon the Security Treaty between Japan and the United States, the court saw itself faced with the task of determining the question of the constitutionality of the treaty. Outlining the history of the treaty, the court recalled that it was concluded simultaneously with the San Francisco Peace Treaty, Article 6a of which envisaged and sanctioned the stationing of foreign armed forces under bilateral or multilateral agreements between one of the Allied powers and Japan. The Security Treaty was such a bilateral agreement authorized in the Peace Treaty between Japan and more than forty United Nations members (which numbered sixty at that time). The court, moreover, referred to the Preamble of the Security Treaty, which recognizes Japan's right to enter into collective security arrangements, and to the principle in the United Nations Charter according to which all nations possess the inherent right of individual and collective self-defense. Hence, aware of the fact that the nation would not have effective means to exercise its

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right of self-defense after the Peace Treaty came into force, Japan in the Security Treaty granted the United States the right to maintain armed forces in and about Japan to deter armed attack against Japan. This background indicates, in the view of the court, the extremely significant bearing the Security Treaty has on the peace, security, and ultimately the existence of Japan as a nation.

At this point, the court raised doubts regarding its own power to review the constitutionality of the treaty. The government of Japan, the court stressed, concluded the Security Treaty as one of the most important acts of national policy. It did so by virtue of its constitutional authority and it obtained the required approval from both houses of the Diet after careful deliberations, which covered the question of consistency of the instrument with the Constitution. Due to the highly political nature of the Security Treaty, any legal determination of whether its substance is constitutional or not is inseparably related to the discretionary power of the two other branches of the government and therefore is basically unsuitable for adjudication and beyond the court's power of judicial review, "unless the treaty is obviously unconstitutional and void." The determination of its constitutionality should be left primarily to the Cabinet, which has the power to conclude treaties, to the Diet, which has the power to ratify them, and ultimately to the political consideration of the people, with whom rests sovereignty. This second part of the decision, notwithstanding its introduction, contains no further ruling on the stationing of the United States forces in Japan.

Such a ruling is, however, provided by the third part of the verdict. It is based on the finding that the United States forces in Japan are foreign troops and do not represent, therefore, Japan's war potential in the meaning of Article 9. The Security Treaty and the Administrative Agreement leave all the rights of command and control over these forces with the United States. Japan does not have such rights as she may have over her own armed forces. The objective of stationing the American forces was to maintain peace and security in Japan and the Far East, there being need to supplement Japan's own weak defense power by trusting in the justice and faith of the peace-loving peoples of the world.

The court accordingly concluded that the stationing of the

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United States forces in Japan is not "immediately, clearly unconstitutional and void, contravening the purport of Article 9, paragraph 2 of Article 98, and the Preamble of the Constitution," but "in accord with the intent and purpose of these provisions." The court would hold this true regardless of whether or not paragraph 2 of Article 9 was intended to ban the maintenance of war potential even for self-defense.

Several associate justices expressed strong disagreement with the majority opinion regarding judicial review of the Security Treaty. They criticized the majority opinion for failing to fulfill the mission of the court as the guardian of the Constitution against violations by the executive and legislature and for making it possible for the Constitution to be changed by a treaty the conclusion of which was not subject to the rigid requirements of a constitutional amendment. They held that the self-restraint of the court because of the highly political nature of the Security Treaty created a dangerous precedent; that the proviso which permitted judicial review only when the unconstitutionality was obvious, did not make sense; and that the majority opinion was inconsistent since it elaborated on the constitutionality of the Security Treaty in spite of its ruling that the treaty was beyond the scope of judicial review.

The supplemental opinion of Chief Justice Kotaro Tanaka is of special interest.[4] First, he argued that Article 2 of the Special Criminal Law providing protection to the United States bases would be valid and justified even if the stationing of the American forces were ruled unconstitutional. Their presence should be respected, in his opinion, as long as it is an actual reality, and the issue of constitutionality should not be considered a premise for settling the case. The Chief Justice, by way of analogy, referred to the presence of illegal entrants who, as long as they remain in Japan, enjoy the protection of their rights. More importantly, in elaborating on the spirit of the Constitution, Tanaka expounded his well known conviction that today nations are closely interdependent and that the crises of one nation directly affect the others. One country's self-defense against aggression, he believes, means the defense of its ally and its coöperation with the ally in defense means the

[4] Subsequently Tanaka was elected associate justice of the International Court of Justice at The Hague.

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country's self-defense. The Chief Justice demanded a teleological interpretation of the Constitution "without adhering too closely to the mechanics of expression." He wants Japan to "break away from the self-centered premise of placing national interest first" and "give due consideration to the matter from the standpoint of international dimension." The Preamble of the Constitution reflects this idea, he writes, by stating that no nation is responsible to itself alone.

Mr. Justice Kawamura in his supplemental opinion replied to the apprehension expressed by the District Court that the right conferred in the Security Treaty upon the United States to use its forces in Japan to contribute to the maintenance of international peace and security in the Far East may involve Japan in a war which has no relationship to the defense of Japan; and he reached the conclusion that under various international commitments, such as the United Nations Charter and the Treaty of Peace with Japan, military actions to be taken by the United States armed forces under the Security Treaty must be based on the resolution or recommendation of the United Nations Organization or conducted in the exercise of "the inherent right of individual or collective self-defense," as provided in Article 51 of the Charter.

## IV

In order to understand the political importance of the Sunakawa trial, one must remember that both the original judgment and the Supreme Court decision were passed at a time when the Security Treaty had become an explosive issue in Japan's foreign relations as well as domestic politics. In October, 1958, negotiations had started between the governments of the United States and Japan for revision of the Security Treaty. The Japanese resented certain features in the treaty and in the Administrative Agreement as being reminiscent of defeat and Allied occupation. The government of Japan had therefore requested a revision aiming at a greater equality and mutuality that would be consistent with the new era of United States-Japanese relations. When Foreign Minister Fujiyama returned from Washington in September, 1958, with Secretary Dulles' consent to begin negotiations for the revision of the treaty, he was met by an unusually militant and bitter anti-revision campaign of the

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leftist opposition. Disagreement on the Security Treaty had once split the Socialist party in 1951 when it was debated in the Diet. Now the reunited Socialists advocated a Japan without armed forces and a foreign policy of neutralism and non-alignment. They not only objected to the revision of the Security Treaty, but even demanded its abrogation, although they must have known that the treaty did not permit unilateral termination. The small Communist party cleverly refrained from openly advocating that Japan join the communist camp, and adopted the Socialist course of neutralism, which to their minds signified a convenient transition to communism. While the extreme leftist elements of the Japanese Socialist party also undoubtedly would prefer Japan to play ball with the Communist nations rather than to conclude defense treaties with "capitalist" America, many other members of the party honestly repudiate communism and would deny that their policy of neutralism benefits it. The separation of the Nishio group from the Socialist party in the autumn of 1959 clearly illustrated the dissatisfaction of the moderates with the increasing radicalization of their party. Many non-Socialists, particularly among the intellectuals, are attracted by neutralism and "third force" ideas, an attraction in which the Indian example plays an important rôle. The defeat in the war and the lessons of the occupation have produced a deep aversion to militarism. Add to this the horror of nuclear weapons and the fear that alliance with one of the giants will draw Japan immediately into disaster in case of another war, and the emotional motivation of the desire for non-alignment is understandable, however unrealistic.

In an effort to help the leftist opposition, Soviet Russia and Communist China let the Japanese government know, directly and indirectly, that they seriously disapproved of the conclusion of a new treaty which they considered to be directed against them. These actions, combined with threats, were intensified before the elections to the House of Councillors (upper House of the Diet). The outcome of these elections and of the local elections, in which the conservatives were quite successful, indicated, however, that a large majority of the voters resented foreign interference in Japan's domestic affairs.

The Date verdict was a windfall for the opposition. Having criticized the policy of the government before, it was now provided by an established court of law with a legal weapon since

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it could accuse the government of a serious violation of Japan's Constitution. The Socialists demanded that treaty negotiations with the United States be broken off immediately, while the government expressed confidence that the Supreme Court would reverse the verdict. Still, even among the conservatives, who did not always agree on all aspects of the treaty revision, one could hear voices recommending that the government wait for such a reversal of the decision before it signed a new treaty. Thus the legal uncertainty was quite embarrassing to Kishi and Fujiyama who had already planned their program for the signing of the new treaty.

The decision of the Supreme Court did not silence the political opposition. When the moment of ratification approached, this opposition found expression in wild demonstrations against the treaty and President Eisenhower's visit. The legal objections to the treaty had been removed, however, by the only authority constitutionally empowered to render final judgment on it. If these objections had been given sanction, the political consequences would have been much more serious than was Kishi's resignation and his replacement by Ikeda, a man who is not likely to follow a very different course in foreign policy. Obviously, the ratification of the treaty would have been impossible to obtain in the Diet had the Supreme Court upheld the original verdict. This would have meant the collapse of the conservative foreign and defense policies. Dissolution of the Diet and immediate new elections would have been unavoidable. Even though a Socialist landslide might not have interrupted the continuity of conservative rule, the conservatives would have come out considerably weakened, and any new government would inevitably have steered an essentially different course in international affairs. The historical importance of the Sunakawa case can only be understood by imagining what would have happened had the Supreme Court handed down the opposite decision.

This paper cannot dwell on the May and June demonstrations. It may, however, be observed that they should neither be overrated nor minimized. The participants, who undoubtedly were stimulated by the student revolutions in Korea and Turkey as well as by Khrushchev's withdrawal of the invitation to President Eisenhower to visit Soviet Russia, consisted largely of immature students unfamiliar with the complex issues involved in the

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treaty. Some were against it since they had been told that it endangered peace, a great many were recruited and possibly paid by organizations under radical-leftist leadership, while others joined in the expectation of an exciting experience. Still, to some extent these demonstrations were an important danger signal, an emotional airing of dissatisfaction with the Kishi regime and its foreign policies. Kishi hmself was never very popular. Possibly because of his record as a past member of the Tojo war cabinet, he was labeled a reactionary even by some conservatives. Some of his tactics in dealing with the Diet were also criticized as high handed. To the ultranationalist fanatic who wounded him in an assassination attempt, on the other hand, Kishi must have appeared excessively soft toward the leftists. Notwithstanding the pamphlets published in defense of the treaty, the Kishi government did not effectively reduce the appeal which neutralism has in Japan far beyond Socialist groups, by bringing home to the people the hard facts which render it an unrealistic and dangerous course for Japan. This failure may be explained by the absence of a dynamic public relations system.

Insofar as neutralism is not the tool of communist aspirations, it should not be regarded as anti-American. Undeniably, the presence of foreign military forces in the country for a long period hurts the pride of an independent nation. Hiroshima and the last war have left painful scars, and the generous assistance rendered by the United States has produced a "poor relation complex" rather than gratitude. Still, the general Japanese sentiment is not anti-American, and it would be a mistake to believe so because of the demonstrations. Perhaps the timing of President Eisenhower's visit which coincided with the ratification of the treaty gave its opponents the opportunity to connect the two events.

It has been argued that the democratization of Japan under General MacArthur's occupation destroyed its traditional values and substituted alien ideas and institutions which the Japanese people were not mature enough politically to understand. The breakdown of the hierarchical set-up, the argument goes on, has led to a chaotic vacuum in which the much praised Japanese discipline and order were lost, while the civil rights granted the people are being abused. This view completely overlooks the fact that it was mainly the terrific shock caused by the de-

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struction of the country and the surrender which brought about the changes in traditional values. The Japanese people could hardly be expected to continue their old ways of life after having suffered this shock. The Allied occupation, which MacArthur conducted, on the basis of general directives, with unique energy and imagination, laid the groundwork for a freer system of government in which the dignity of the individual was to be respected. It was understood that the Japanese would not become mature democrats overnight, and that something quite different from the American pattern would develop. Yet new ideas and values had to be offered to prevent despair and misery from driving the people into radicalism and anarchy. The splendid initial response of the Japanese proved that there was a need for the reforms. To some extent the reforms only pushed forward ideas that had been advocated by Japanese pioneers of democracy. They might have materialized without war and occupation, even though at a much slower tempo. Nobody will deny that mistakes were made by over-eager reformers but on the whole the meeting with a different civilization has benefited Japan. Rigid hierarchical barriers and feudal remnants have fallen or are on the decline, as the marriage of the crown prince to a commoner illustrates more clearly than any other event; the status of women is changing rapidly and with it the whole relationship between the sexes; the land reform has freed the peasant-tenant so that he is immune to communism; and Japan enjoys a freedom of the press which is exceeded in few other countries. Much of the confusion of the present period of transition must be attributed to events which occurred after the main occupation reforms, most of all to the intensification of the cold war with all its dividing effects. The common sense of the bulk of the people and particularly the stable attitude of the rural population, however, should dispel much of the fear that the Japanese nation may join the communist camp or that the recently revived violence of ultranationalist fanatics may foreshadow a return to the rule of the radical right. That does not mean, however, that the people must not beware of these dangers.[5]

[5] The result of the general elections to the House of Representatives in November, 1960, appear to confirm the writer's view about the relative stability of the Japanese political scene. The elections took place after the article was written.

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It is customary for young intellectuals in Japan to be inclined toward radicalism. Usually they become politically moderate once they are absorbed by business and profession. The hope may be justified that this experience will repeat itself in spite of the different atmosphere in which the present younger generation has been brought up.

## V

While adding his own comments on the substance of the Sunakawa decisions, the writer is deeply aware that interpretation of the Constitution of Japan is a Japanese problem, however much it may affect the outside world. Since national integrity and security were the principal judicial considerations, it may appear pretentious for any non-Japanese to undertake an evaluation of the two verdicts. In spite of his best intentions to understand the Japanese point of view, the reaction of the writer may also be influenced by the fact that he served, though in a civilian capacity, in the very United States forces in Japan which are at issue in this trial. The following observations should therefore be regarded primarily as an attempt to explain the case to the American public.

It is well that the Supreme Court did not evade the interpretation of Article 9 of the Constitution by what the layman calls "legal technicalities," such as the applicability of Article 31, the due process of law clause. Chief Justice Tanaka's opinion, according to which the privileged protection of the United States forces would be valid even if their stationing were ruled unconstitutional, indicated a possibility of avoiding an interpretation of Article 9. It was based on domestic law but might also have been derived from the internationally recognized obligation of the host nation to respect armed forces of a friendly country. The majority of the court did not choose to avoid the issue of constitutionality nor was this the intention of the Chief Justice, who remarked that it became necessary for the court to rule on the points made by the original judgment.

It is also gratifying that the Supreme Court took a position on the fundamental question of whether Japan retains the right to defend itself, notwithstanding Article 9, and if so, how this right may be realized. This has been a controversial issue for a long time in connection with Japan's modest rearmament through

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the organization of self-defense forces. Opinions differ on the origin of Article 9.[6] In 1946, when the Constitution was debated in the Diet, the spokesman of the Government, Minister of State Kanamori, expressed the rigid view that Article 9 prohibited the maintenance of armed forces by Japan even to the limited extent required for the purpose of self-defense. This view, which was initially shared by Prime Minister Yoshida, was in conflict with the intention of the late Hitoshi Ashida, subsequently Prime Minister who, as a member of the Diet, had proposed and obtained an amendment modifying paragraph 2 of Article 9 by the introductory phrase: "In order to accomplish the aim of the preceding paragraph" (renunciation of war and the threat and use of force as means of settling international disputes). This amendment was designed to permit the interpretation that Article 9 did not apply to self-defense against armed attack. The attitude of the Government, which nevertheless adhered to the rigid interpretation, could, of course, have been motivated by other than legal considerations. Thus the popular horror of things military so shortly after the end of the war was at its height. Further, the effect of the great symbolical Japanese peace gesture, which the war renunciation was meant to signify, could not very well be weakened by exceptions or modifications. Moreover, the defense of Japan was no practical problem as long as the occupation continued. The Government may also have been uncertain about the reaction of General MacArthur although, according to the reports of Takayanagi[7] who visited the United States to do research on the history of the Constitution, the general never questioned Japan's right of armed self-defense. However that may have been, the rigid interpretation prevailed in the first years after the Constitution came into force. Subsequently the intensification of the cold war had its impact on occupation policies, and complete disarmament was no longer

[6] For the history of Article 9 see Courtney Whitney, *MacArthur: His Rendezvous With History* (New York, 1956), pp. 257-258; Nobushige Ukai, "Constitutional Trends and Developments," *Annals of the American Academy of Political and Social Science*, special issue, *Japan Since Recovery*, CCCVIII (November 1956), pp. 2 and 3; Harold Quigley, "Revising the Japanese Constitution," *Foreign Affairs*, October 1959, pp. 140-145; and Theodore McNelly, "The Japanese Constitution: Child of the Cold War," POLITICAL SCIENCE QUARTERLY, LXXIV, No. 2 (June 1959), pp. 176-195.

[7] See the English language paper *Tokyo Japan Times*, March 16, 1959.

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favored. The so-called police reserve was a first step toward armed services, the self-defense forces followed, and the Japanese Government eventually adopted an interpretation of Article 9 which permitted limited rearmament for self-defense purposes. In the light of this development, one might suspect political pragmatism both in the rigid interpretation of 1946 and the lenient interpretation of later days. The problem of self-defense consequently cannot be resolved by a mere word interpretation or on the basis of official statements and opinions at the time the Constitution was enacted, but calls for a constructive consideration of broad general principles.

Both decisions recognize Japan's right of self-defense, but that of the Date verdict is without teeth. The view that Japan is strictly limited to recourse to the United Nations and may neither resist armed aggression herself nor request other nations to deter or repel it virtually amounts to a denial of the right of self-defense. The United Nations has made a splendid contribution to the cause of peace, but mere reliance on that world organization cannot guarantee the security of an unarmed nation so long as the United Nations themselves are split by global bipolarism or other antagonisms and so long as an effective international police force does not exist. The more recent United Nations experience in the Congo has illustrated the complexity of this problem. The United Nations Charter itself therefore permits regional defense arrangements. If a defenseless Japan were to apply for help to the United Nations after it had been attacked, police actions against the aggressor would in all probability be vetoed in the Security Council. In the best possible case the veto might be overruled by a two-third majority in the General Assembly. Before contingents of United Nations member forces could arrive in Japan, valuable time might have been lost and its defense might have become a hopeless task. The presence of armed forces in the country, on the other hand, not only facilitates immediate repulsion of attack but also deters the would-be aggressor. The conception of defense contained in the original judgment can be explained only by the unrealistic belief that there will be no more wars or that non-alignment protects a nation from getting involved in a war.

In contrast to this view, the Supreme Court finds no conflict between the principle of peace embodied in Article 9 of the Constitution and the inherent right of self-defense which enables

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a sovereign nation to resist armed attack. The statement of the court that Japan is not restricted in the exercise of this right, but free to choose any measures appropriate to the existing international situation provided they clearly serve the purpose of defense, draws the logical conclusion from this finding.

In pointing out that the Peace Treaty, which was signed by the majority of United Nations members, sanctioned the continuation of the United States forces in Japan, the court not only underlined the defensive character of the Security Treaty but also came close to the Miyazawa theory that these forces perform functions comparable to those of the United Nations. Principles of natural law, of which Chief Justice Tanaka is an outstanding disciple and teacher, may have influenced the court's conception of the inherent right of self-defense. His supplemental opinion is inspired by a lofty international spirit evidently connected with these principles. In a bold expansion of the majority opinion, he even requires that the strength necessary for the self-defense of a nation amount to one of "an international force for the maintenance of peace of the international entity," while at the same time aimed at defending its own country. From a purely legal point of view, the characterization of the United States forces in Japan as a substitute for United Nations forces might be challenged, but this construction is not a necessary premise of the decision. The essential point, which is lucidly developed in Mr. Justice Kawamura's opinion, appears to be that the Security Treaty remains within the framework of the United Nations Charter and therefore cannot have aggressive purposes.

It has been regretted that the Supreme Court refrained from expressing an opinion on the constitutionality of Japan's own self-defense forces. This could not be expected since it is established judicial practice to restrict decisions to the issues involved in the individual case. However, it may not be erroneous to draw certain conclusions from the basic approach of the Supreme Court to national self-defense.

The decisive point of the Supreme Court decision is the rejection of the argument that the United States forces represent Japanese war potential in the meaning of Article 9. This rejection is not only based on the absence of Japanese command and control over these forces, but also on the even more important reason that they were actually designed to make up for the lack

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of Japan's own defense power. Since the uncertainty about the scope and meaning of the constitutional prohibition contributed to Japan's military weakness, the court seems to indicate that the United States forces continued in Japan because of, rather than in spite of, Article 9. In addition, the court could have recalled the fact that Japan's decision in 1946 was made in the full knowledge that her complete disarmament was a clear aim of the victors. The prohibition of war potential meant Japanese war potential rather than that of a foreign power. When the occupation came to an end, the Korean conflict had destroyed previous dreams of a long period of peace and it was then that the defense of Japan became a truly important concern. Since effective rearmament was out of the question for many reasons, Japan was dependent upon other nations to fill the power vacuum. If it is true that the constitutional prohibition did not aim at foreign forces, there is no merit in the argument of the District Court that Japan maintains the United States forces as war potential because as a party to the Security Treaty she agreed to their stationing.

The District Court implied that the Security Treaty was unconstitutional although it avoided a clear statement to this effect. Nor did it discuss the two interwoven problems of the relationship between the Constitution and international treaties, namely, the question of supremacy and that of judicial review of treaties. The Supreme Court decided in favor of the supremacy of the Constitution but, without expanding its ruling to treaties in general, held that the constitutionality of the Security Treaty should primarily be judged by the two other branches of the government and should be subject to judicial review only if a violation of the Constitution is obvious. The self-restraint which the Supreme Court has shown here regarding judicial review because of its reluctance to interfere with the discretionary determination by the executive and legislature of highly political matters has some parallels in the judicial practice of other nations. For instance, the United States Supreme Court in a 1948 decision[8] expressed the view that the very nature of executive decisions as to foreign policy is political, not judicial, and that they are of a kind for which the judiciary has neither

[8] See *Chicago and Southern Air Lines, Inc.* v. *Waterman SS Corp.*, 333 US 103, 111 (1948).

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aptitude, facilities nor responsibility. The United States Supreme Court however, has not renounced its authority to review the constitutionality of international treaties,[9] although no treaty has actually been held unconstitutional. Obviously there is a strong tendency on the part of our judiciary not to invalidate international treaties unless they would violate very fundamental provisions of the Constitution. Such invalidation, especially after treaties have been in force for a long time, leads to an extremely difficult situation. The conventional distinction between the domestic and international effects of invalidation offers no satisfactory solution if the treaty partner disagrees with the elimination of the constitutionally objectionable element of the treaty. Since amendments to the Constitution are usually difficult or impossible to obtain, the government is faced with the dilemma that it must violate either its own constitution or its international obligations. While the approach of the Japanese Supreme Court legally differs from that of its American counterpart, it resembles it in practical application; the common denominator is the disinclination to invalidate treaties except in cases of flagrant violations.

There is merit in the view of the associate justices who criticized the majority opinion as inconsistent because it calls for restriction of judicial review of the Security Treaty to instances of obvious unconstitutionality and nevertheless elaborately discusses and rules on its constitutionality. A full assumption of the right of judicial review would certainly have been preferable to the strangely theoretical self-restraint. Based as it is on the very general criterion of the highly political nature of the treaty, this self-restraint, if upheld, could rule out judicial review in future cases in which review would be imperative under a system of government by law. Still the court, by going far beyond what was required to decide that the treaty was not obviously unconstitutional, has done much to clarify some controversial issues. Although the majority opinion leaves considerable doubt in this respect, the court may have intended that judicial review be restricted only with regard to the constitutionality of the treaty itself, while other elements of the decision would remain subject

[9] For a discussion of the manner in which our judges have dealt with the relationship between the American constitution and treaties, see Arthur E. Sutherland, Jr., "Restricting the Treaty Power," *Harvard Law Review*, Vol. 65, No. 8 (June 1957), pp. 1305 *et seq.*

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to unmodified review. Since the decisive considerations were the acknowledgment of the inherent right of self-defense and the interpretation of war potential as meaning only the war potential of Japan, one might even argue that the Sunakawa case did not necessarily require a ruling on the court's power to review the Security Treaty. Be that as it may, it appears evident in light of the thoroughness of the decision and of the supplemental opinions on all aspects of the case that the self-restraint of the court did not amount to an abdication of its mission as guardian of the Constitution.

After the verdict of the Supreme Court was pronounced, the Socialists blamed the nation's highest tribunal for political partiality[10] and for having betrayed the independence of the judiciary by the acceptance of the Government's interpretation. Objective observers, however, do not believe that the Supreme Court can be accused of political opportunism. Generally speaking, the judges of Japan, including those of the lower courts, are conscientious and impartial servants of the law. They are occasionally criticized for slowness and lack of imagination but their judicial integrity has been questioned only for political propaganda purposes. It would have been equally unfair to call Judge Date and his two associates prejudiced Socialists or "fellow travellers" because their decision benefited the political left. So far as known, no serious critic has done so. The unanimity with which the original judgment was reversed by the Supreme Court should prove how unfounded the Socialist accusation was. Inasmuch as dissenting opinions have been quite frequent in the short history of the present Supreme Court, it is absurd to maintain that all fifteen justices violated their duty of impartiality.

In conclusion, it is believed that the Sunakawa decision of the Supreme Court will go into Japan's legal history as a remarkable exhibition of judicial review. The nation's highest tribunal has given unevasive answers to complex and unprecedented questions. While avoiding a purely analytical and legalistic approach and literal interpretations, it has arrived at a result which is politically wise as well as legally acceptable. In rejecting defenselessness and isolation, the court has shown a mature understanding of the prevailing world situation. To

[10] See *Japan Times*, December 17, 1959.

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vary a phrase of Mr. Justice Oliver Wendell Holmes, the Sunakawa case was considered in the light of the whole experience of the court and not merely in that of what was said and thought thirteen years ago under different circumstances. A certain flexibility is the prerequisite of an enlightened judicial review if the basic law is to remain a living constitution. The writer is convinced that the members of the Supreme Court of Japan have lived up to their responsibilities.

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# THE AUSTRALASIAN MONROE DOCTRINE

## *Genesis of the Doctrine*

THE Australasian or Pacific Monroe doctrine did not leap into being full grown as Athena sprang from the head of Zeus; rather it, like the celebrated December 2, 1823 dicta of President James Monroe which were later combined to form a basic dogma of American foreign policy, was the culmination of a steadily developing process. The New Guinea annexation crisis of 1883, which served to crystallize colonial opinion on, and to formulate a policy for, the future of the South Pacific, was the precipitating factor rather than the primary cause of the Australian pronouncement. The roots of both declarations repose deep in the history and the geographic setting of their respective hemispheres; one might even say that the Australasian assertion was influenced by the neighboring winds and currents.

From the earliest period of Australian history there were some British officials who entertained large ideas of the scope of their authority in the Pacific. Captain Arthur Phillip, R.N., who landed at Port Jackson on January 23, 1788, to establish and govern a convict settlement, and his successors were expected to exercise jurisdiction over vast territories. These were defined in Phillip's "Commission" or "Letters Patent" as extending from Cape York in latitude 11° 37′ south, to the South Cape in latitude 43° 30′, and inland to the westward as far as 135° east longitude, *"comprehending all the Islands adjacent in the Pacific Ocean, within the latitudes of the above mentioned 'Capes'."*[1] The first territory annexed under this commission was Norfolk Island, which was taken possession of and settled by the governor in the year 1788, to prevent it from being occupied by any other European power, as it "may hereafter become useful."[2] Lord Howe Island was likewise annexed the same year.

The southern and western coasts of Australia were not included within the territory defined as British in Phillip's com-

[1] New South Wales, *Votes and Proceedings of the Legislative Assembly* (Sydney, 1870-1871), IV, pp. 967-968. Hereafter New South Wales, *V. & P.*

[2] J. F. Watson, ed., *Historical Records of Australia* (Sydney, 1914-1925), series 1, vol. I, p. 13.



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mission. They were "Terra Nullius" and, therefore, any sovereign state might consider itself at liberty to take possession of them.[3] Nevertheless, the early governors of New South Wales were determined that the southern and western portions of the continent should not fall into non-British hands. To forestall the French in Van Diemen's land (Tasmania), a settlement was made at Risdon Cove and the colony of Hobart founded. Within three decades after the initial establishment at Sydney Cove responsible officials in London and in Sydney had decided that the great continent was a British prize not to be shared with other powers; consequently, in 1824 and 1826 the western half was annexed. When Lord John Russell was asked what portion of Australia England claimed, the answer was "the whole of it." His tenure at the colonial office, April, 1839, to June, 1841, was distinguished by the formal claim to all of Australia and the conversion of New Zealand into a British colony.

While imperial statemanship indicated an early solicitude over, and developed a policy for, Australia, interest in New Zealand lagged and was uncertain. Although governors of New South Wales assumed a vague authority over their neighbor across the Tasman Sea and looked upon it as a kind of dependency of their colony, England disavowed the idea of sovereignty over New Zealand until apprehension of French colonization there prompted her to extend the boundaries of New South Wales. Captain William Hobson, R.N., was sent to treat with the Maori chiefs for the cession of sovereignty over a portion or all of their country, and then to become lieutenant-governor therein under the jurisdiction of the governor of New South Wales. In the treaty of Waitangi, signed February 6 and proclaimed May 21, 1840, the principal chiefs agreed to acknowledge Queen Victoria's sovereignty. Thus, as a result of Anglo-French competition, by 1840—only fifty-two years after planting the initial settlement at Port Jackson—the larger land masses in the South Pacific had been incorporated into the British empire, although no attempt had been made to establish dominion over the numerous islands of the South Seas. Proposals of this nature, however, soon emanated from the Australasian colonies.

[3] Sir Ernest Scott, "Taking Possession of Australia—The Doctrine of 'Terra Nullius' (No Man's Land)," Royal Australian Historical Society, *Journal and Proceedings*, XXVI, No. I, 1940-41.

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Although Westminster remained cool to further large annexations in Oceania, Lord Stanley, secretary of state for the colonies, was "strongly disinclined to allowing any other European power to establish themselves" in close proximity to New Zealand, and was convinced of the "impolicy of admitting any foreign colony in those seas."[4] James Stephen, an able and influential undersecretary, likewise was "for having the Australian world as completely and exclusively English as possible."[5] Less than two years after the proclamation of sovereignty over New Zealand an official colonial office amendment rectified the gross error made by Captain Hobson in defining the limits of the new colony, and then extended them to include the Chatham and other small islands to the east and southeast.

Once New Zealand was firmly established, the immensity of the Pacific Ocean altered the perspective of the colonists. Courageous settlers who had journeyed from Britain to found new homes but still maintained close cultural, economic, and political ties with the mother country over a vast distance of 14,000 miles, considered islands lying one to two thousand miles away comparatively close. To Auckland residents, certainly New Caledonia, approximately 1000, and the New Hebrides, less than 1100 nautical miles away, were near neighbors. The distance from the North Island to Fiji is approximately 1150 nautical miles, to Tonga 1100, to Apia, Samoa, 1575, and to Rarotonga, in the Cook Islands, 1640; thus propinquity, particularly in the case of Auckland, created special interest in these groups.

Strategically located in the South Pacific, separated by long distances from any continent, peculiarly safe from invasion, but closer to the main island groups of Polynesia than any Australian colony or any continental land mass, New Zealand appeared to some statesmen to have been singularly cast by her unique position for a mission of manifest destiny in the South Pacific. Her proximity to—sometimes referred to as contiguity with—the island groups to the northeast, the prevailing winds and currents of the neighboring ocean, the advocates of a large policy

[4] Minutes on J. E. Bright to Stanley, January 5, 1842, Colonial Office, 208/19. Public Record Office, London. Hereafter cited as C. O.

[5] Stanley to Hobson, April 21, 1842, in *ibid.*

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reasoned, predestined the colony to a predominant place in Oceania.[6]

The first to catch that vision was Captain (later Sir) George Grey who, only three and a half months after his appointment on January 1, 1848, as "Governor-in-chief" of New Zealand, addressed a letter to Earl Grey, colonial secretary, informing him that the Fiji and Friendly (Tonga) Islands desired an alliance with England and recommending favorable action. If Britain did not act, he feared France would. In London, however, Her Majesty's advisers considered the expense which would be entailed in such an extension of the empire unjustifiable and instead arranged for the appointment of consular agents in the Friendly and Fiji Islands.[7]

In 1853, Sir George Grey cruised among several Pacific island groups. Finding the French in possession of New Caledonia, he remonstrated with the colonial office, warned of the dangers likely to arise in the future, and proposed a federation of South Sea islands under the auspices of New Zealand.[8] The mother country, however, remained unconvinced of the need for positive action and actually cancelled Grey's commission over Tahiti. Only in the case of one minor group—the Auckland Islands—did the energetic, persevering, and perspicacious statesman succeed in moving the colonial office.[9]

The refusal, in 1878, of the imperial government to extend its protection to the New Hebrides group drew a spirited protest from Sir George Grey, then serving as premier of New Zealand. In March, 1879, he further contended that although the limits of the colony of New Zealand had been altered to exclude the New Hebrides, these were still a British possession, and warned: "Any attempt to confine the Anglo-Saxon race within the limits of the New Zealand Islands must prove a fail-

[6] New Zealand, *Appendix to the Journals of the House of Representatives*, 1897, I, A—5, p. 1; *ibid.*, 1874, A—3, pp. 6, 8. Frequently referred to as *Parliamentary Papers* and hereafter cited as New Zealand, *Journals*.

[7] Earl Grey to Sir G. Grey, October 9, 1848, C. O., 209/59, Governor General's Archives, series 1, vol. XXII, National Archives of New Zealand, Wellington.

[8] William Lee Rees and Lily Rees, *The Life and Times of Sir George Grey, K. C. B.* (2 vols., London, 1892), I, pp 128-132.

[9] New Zealand, *Journals*, 1879, I, A—5, p. 1.

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ure. It might as well be attempted to confine the birds of the ocean within the same limits."[10] In fine, Sir George advocated a policy of allowing the colonies either to annex or to occupy, with the consent of the inhabitants, islands in the Pacific Ocean whose cost of governing and maintaining the colonists might be willing to undertake.

But rights of discovery in the adjacent islands were allowed to lapse. If the policy of Lord John Russell toward the southern continent had continuously obtained in the colonial office toward the South Seas, "then," in the words of Francis P. Labillière, an Australian barrister who enthusiastically advocated Pacific expansion and carried the campaign to London, "long before the annexation of New Caledonia by France, the same answer might have consistently been given with respect to all the islands of the Western Pacific, whose manifest destiny it is to go with the mainland."[11] As time passed and the discovery of gold and other mineral wealth led to the rapid growth and development of sections of their continent, Australians naturally enough regarded themselves as the leading power in the South Pacific and, besides their own immense homeland, looked upon the adjacent islands as their proper inheritance; they were convinced that their interests were "involved in securing the peaceful and progressive supremacy of Australian influence in the adjoining sea." Ambitious Australians unconsciously concluded that all the neighboring territory should be theirs to occupy as soon as they had the leisure and means to do so.

The Fiji Islands, to which numbers of restless Australians and other adventurous British subjects migrated in the middle and late nineteenth century, became clearly marked as a British sphere. These settlers soon became irritated by Great Britain's policy which would neither protect her citizens residing there nor suffer them to govern themselves. As early as 1869, the government of Victoria, the youngest of the Australian colonies, toyed with the idea of interposing to control the government of the Fijis in the interest of the white inhabitants of the islands, thus eliminating the necessity of their seeking justice elsewhere. In that year the *Melbourne Age* declared:

[10] *Ibid.*, p. 3.

[11] Royal Colonial Institute, *Report of Proceedings*, XVII (London, 1886-1887), p. 32. Hereafter R.C.I., *Proceedings*.

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> We are bound, we have no choice but by our own interposition to prevent any other. . . . It would be a danger if these islands fell into any hands, not British, and there is no need of it. What protection is asked for we can confer, and those who ask would accept; and we have the right, indeed it is our duty to ourselves, to confer it, since the British Government will not, and it is opposed to Australian interest that any other Government should.[12]

The *Standard,* fearing that the United States government might act favorably upon an annexation petition addressed to the president by the white settlers, joined forces with the *Age* to emphasize the significance to a naval power of the Fiji Islands located as they were in a quarter of the world which was bound to become one of the principal highways of the maritime nations. The former journal asserted that "the importance of such a possession as this can scarcely be over-estimated. To the colonists of Australia, and of New Zealand at least, the establishment of a great American outpost so near their shores cannot but be viewed with considerable anxiety as affecting their political and commercial position."[13]

The following year, the Rev. John Dunmore Lang, a Presbyterian minister of New South Wales who played a vigorous rôle in the Australasian campaign to convert the South Pacific into a British Oceania, prepared an eighteen-point petition to the legislative assembly of New South Wales on the annexation of the Fiji Islands. He proposed a resolution on the subject which, in part, read:

> That the occupation of the Fiji Islands by any other Power in Christendom than Great Britain herself or one emanating directly from her and bound to her by the ties of a common origin would be exceedingly detrimental to British interests throughout the Pacific Ocean, as well as calamitous in a very high degree to this colony in particular, to which from its geographical position the Islands of the Western Pacific naturally look for their guide and protection.[14]

[12] *The Age,* Melbourne, December 20, 1869, reprinted in the *Fiji Times,* Levuka, Ovalau, March 12, 1870. This bold assertion predated the Roosevelt corollary to the Monroe doctrine by nearly thirty-five years.

[13] *The Standard,* Melbourne, Dec. 29, 1869, reprinted in the *Fiji Times,* May 7, 1870.

[14] John Dunmore Lang, Papers, vol. I, pp. 132, 141-142, Mitchell Library, Sydney. Printed in New South Wales, *V. & P.,* 1870-1871, IV, pp. 967-968.

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New Guinea, nearer to Australia than are the Fijis, naturally commanded more strategic value and attracted considerably more attention. The interest that Australians came to evince in the future of that large island which, like an enormous bird, hovers precariously near their most northern shores was similar in many respects to the concern of American statesmen and the older states of the republic over the destiny of Cuba. Several Australians and New Zealanders, supported by some informed Englishmen (including Commodore J. E. Erskine and Captain John Moresby, both well acquainted with the strategic location of New Guinea) enunciated views strikingly similar to those of Secretary of State John Quincy Adams when he wrote that the islands of Cuba and Puerto Rico, were "natural appendages to the North American continent, and one of them, Cuba, almost in sight of our shores, . . . has become an object of transcendent importance to the commercial and political interests of our Union."[15]

Opinions varied as to the economic resources of New Guinea but there was general agreement that its geographical position afforded its chief value. The Torres Strait is essentially an Australian highway; eighty miles only separate New Guinea from Australia, and this distance is bridged by various islands which the home government, in 1880, found convenient and expedient to include in the boundaries of Queensland. One of these small Torres Strait islands lies only twenty miles from the shores of New Guinea. Furthermore, the passage on the eastern shore of New Guinea—the China Strait—discovered by Captain Moresby, meant a saving of three hundred miles by sea between Australia and China, thus rendering it the most advantageous route for the future commerce of that part of the world.[16]

As early as March, 1874, Labillière, then resident in London, importuned the secretary of state for the colonies to annex Eastern New Guinea, and stated the reasons therefor,[17] while in the same year Sir Henry Parkes, serving as colonial secretary

[15] Adams to Nelson, April 23, 1823, U.S. House of Representatives, *Executive Documents*, 32 Congress, 1 session, no. 121, pp. 6-7.

[16] Julius Vogel, "New Guinea and Annexation," *The Fortnightly Review*, new series, CC (London, August 1, 1883), p. 254.

[17] Labillière to Carnarvon, March 26, 1874, C. O. 234/34.

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for New South Wales, pressed upon Governor Hercules Robinson the sound policy of colonizing the neighboring island.[18]

Less than a year later, on April 29, 1875, a deputation of the council and fellows of the Royal Colonial Institute presented the Earl of Carnarvon, secretary of state for the colonies, with a memorial praying that the shores of Eastern New Guinea "should be added to the Empire without delay," pointing out that "it would be most prejudicial to our interests that any position on the shores of Eastern New Guinea, or of the islands situated off its coasts . . . . should belong to any other Power." The memorialists felt that it was "impossible to estimate the extent of insecurity to the Australian portion of the Empire and to British interests generally, which would be occasioned by the fine landlocked harbor of Port Moresby, and many other valuable harbors recently discovered, falling into the possession of a foreign State."[19]

Seven years thereafter, on December 2, 1882, the alert honorary secretary of the R.C.I. drew the attention of the secretary of state for foreign affairs, as well as that of the agent general for Queensland, to an article in the *Augsburg Allgemeine Zeitung* of November 27, suggesting that Germany annex and colonize New Guinea.[20] On June 1 of the following year a deputation of the council of the Institute presented a long memorial to the Earl of Derby, colonial secretary, again setting forth a number of reasons in favor of annexing New Guinea and maintaining that the possession of the island "by any other European Power would, even in time of peace, cause many inconveniences and expenses to England and her Australian possessions, and in time of war would be a standing danger to Australasia, and a menace to British interests in the East generally."[21] Derby informed the organization that Her Majesty's government was not prepared to annex any portion of New Guinea, and that there was no evidence to indicate or reason to suppose that Germany con-

[18] Sir Henry Parkes, *Fifty Years in the Making of Australian History* (2 vols., London and New York, 1892), II, pp. 135, 413. Minute of July 27, 1884.

[19] R. C. I., *Proceedings*, 1884-1885, VI, pp. 192, 263-264.

[20] Queensland, *V. & P.*, 1883, p. 774.

[21] New South Wales, *V. & P.*, 1883-1884, IX, pp. 79-80.

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templated acting in the direction suggested in the article in the *Allgemeine Zeitung*.[22]

Statesmen of New Zealand were not particularly interested in New Guinea, excepting to the extent such annexation might form part of a general plan of dealing with territories in the South Pacific. Their primary solicitude was over the group of islands lying to the eastward and their expansion efforts were directed toward Fiji, the Friendly, the Hervey (Cook) Islands, and especially to the Navigator archipelago. Strategically, the Navigator or Samoan Islands in the South Pacific are to New Zealand what the Hawaiian Islands in the North Pacific are to the United States. The former outpost, among the islands of Oceania, is almost centrally located in the southern ocean and closer to New Zealand than to any other power. Together with Tonga and Fiji, the Samoan group control the sea lanes from the northern and eastern Pacific to Australia and New Zealand. In an age of steam navigation and a rapidly developing Pacific region, these islands were destined to arouse attention in New Zealand.

Sir Julius Vogel, like Sir George Grey, was a persistent advocate of British dominion in the Pacific. As a member of parliament, as postmaster general, colonial treasurer, minister for immigration, telegraph commissioner, and premier, and later as agent general in London, he repeatedly agitated for annexation of the adjacent islands, maintaining that New Zealand, the colony, might well do "useful work for Great Britain, the Empire," by assisting the mother country "in the great national work of extending the British dominion throughout the unappropriated islands of the South Pacific."[23] Vogel's proposals of 1871, 1873, and 1874, including a plan for a "New Zealand and Polynesian Company," which would create a "grand Island Dominion,"[24] however, met with no more encouragement in Westminster than did those of Australians for securing the adjoining New Guinea.

[22] Great Britain, *Accounts and Papers*, 1883, XLVII, Cd. 3617, p. 120. *Cf.* Marjorie G. Jacobs, "The Colonial Office and New Guinea, 1874-84," Australia and New Zealand, *Historical Studies*, V (May 1952), pp. 106-118.

[23] New Zealand, *Journals*, 1874, I, A—3, pp. 6, 9.

[24] *Ibid.*, 1871, A—6, p. 5; 1872, A—1, pp. 23-24; A—1a, pp. 28-29; 1874, A—3, pp. 4-6, 8-9.

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The daring *coup de main* of Queensland's premier, Thomas McIlwraith, in taking possession for the British empire, on April 4, 1883, of Eastern New Guinea, New Britain, and New Ireland, with Trobriand, D'Entrecasteaux, and the Louisiade archipelagoes, was repudiated by the imperial government, convinced that the apprehension entertained in Australia that Germany was about to establish itself on the shores of New Guinea had been altogether indefinite and unfounded.

During the crisis that followed the disavowal of annexation, the agents general of New South Wales, New Zealand, Queensland, and Victoria, representing those colonies' interests in London, labored to impress upon the Earl of Derby the necessity of establishing a protectorate not only over New Guinea but also over other groups in the western Pacific. The premier of Victoria, James Service, warned the governor of that colony that "a strong feeling of dissatisfaction will spread throughout these colonies, if England, while holding Australia back from acting in her own interests, at the same time neglects to take a step which Australia deems essential to her future security and welfare."[25] The colonial office was not convinced by these representations.

The imperial authorities took the position that in order for them to consider proposals for the protection or government of New Guinea and other places in the western Pacific, the colonies should "combine together effectively" and provide the cost of implementing any policy adopted and that, "in the meantime, Her Majesty's Government . . . must continue to decline proposals for large annexations of territory adjacent to Australia, in the absence of sufficient proof of the necessity for such measures." If, however, a reasonable annual sum were provided by the colonies, the home government would be willing to take steps for strengthening the naval forces on the Australian station. "A protectorate, thus gradually established over the coastal tribes, would be capable of meeting the principal requirements of the case for some time to come. . . ."[26]

[25] Service to the governor, June 16, 1883, printed in Service memorandum for the governor, "German Occupation in New Guinea and the Western Pacific, Dec. 20, 1884," Premier's Dept., Melbourne, Victoria.

[26] Queensland, *V. & P.*, 1884, II, "The Annexation of New Guinea," pp. 1-2.

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Answering a July 21, 1883 communication of the agents general, Derby indicated that New Britain, New Ireland, the Solomon, and the Santa Cruz groups "are at a considerable distance from Australia, and are, for the most part, of great size, and inhabited by warlike and cannibal tribes. Her Majesty's Government have not before them any evidence that the Governments of the Australian Colonies have sufficiently considered the extent of the responsibilities which the annexation or the protectorate of these islands would involve, and they are far from being satisfied that the assumption of those responsibilities is necessary or justifiable." Again, he informed the agents general "that the claims and interests of other countries constitute a very serious impediment to that 'complete jurisdiction' which you represent that England ought now to assume over the Western Pacific, and that the best known and most frequented groups of islands have already such relations with Foreign Powers, in common with England, as cannot be summarily ignored."[27]

Thus before the convention on the annexation of Pacific islands was convened in Sydney on November 27, 1883, the lines between imperial policy and colonial aspirations were sharply drawn. The refusal of the home government to sanction an active colonial policy in the western Pacific was received with profound regret throughout Australia and New Zealand. On September 3 the *Post* of London reported: "From Queensland in the north to New Zealand in the south, from Western Australia in the west to Fiji in the extreme east, the cry is echoed 'the islands of Australasia shall belong to the people of Australia.' This adaptation of the Monroe doctrine to the Antipodes so skillfully thrown out by the Premier of Victoria will be the keynote of colonial policy for years to come." The newspaper expressed the opinion that nothing could prevent the Australian dependencies' becoming the predominant power in the Pacific, and this great political heritage could be quietly assured if the needful precautions were not neglected.

The Australian and New Zealand press generally supported the campaign for the annexation of New Guinea and the New Hebrides and for the abolition of convict settlements in the western Pacific. The exception in this regard was the *Sydney*

[27] *Ibid.*, pp. 136, 380; Victoria, *V. & P.*, 1884, II, Paper no. 25, p. 64.

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*Bulletin* which persistently inveighed against the indefinite extension of the Pacific Monroe doctrine to the adjacent islands. The editor of the weekly insisted that the annexation of New Guinea would not better Australia's position politically and strategically. Quite the contrary, such acquisition would only bring her nearer to rivals for Pacific islands. "Unless it be contemplated that our countrymen shall appropriate the whole globe," he argued, "we must submit to have neighbours somewhere. And it certainly seems ridiculous that, while we are screaming 'Keep your distance!,' we would be stepping out towards the very people we warn off."[28]

The Sydney Convention, assembled ostensibly to discuss the annexation of New Guinea, actually proclaimed a policy, not only pertaining to that large island and the New Hebrides, but relating to the whole of the Pacific south of the equator and to the threat of increased French penal transportation to the area. The incisive resolutions, as finally adopted unanimously on December 5, 1883, were the most comprehensive and authoritative exposition of Australasian policy in the Pacific that had yet been made; moreover, they emanated from an inter-ministerial conclave of fifteen members, seven of whom had been born in the antipodes. But inter-colonial rivalry prevented the establishment of a Federal Council of Australasia.

These Pacific declarations, however, interpreted contemporary Australian public opinion, wherever it existed, and served notice, at least, of the attitude that the Australasian governments would assume in the future. The first resolution stated: "That further acquisition of dominion in the Pacific, south of the Equator, by any Foreign Power, would be highly detrimental to the safety and well-being of the British possessions in Australasia, and injurious to the interests of the Empire." The second expressed the confident belief that the imperial government would "promptly adopt the wisest and most effectual measures for securing the safety and contentment of this portion of Her Majesty's dominions." The third enunciated the emphatic opinion that "such steps should be immediately taken as will most conveniently and effectively secure the incorporation within the British Empire of so much of New Guinea, and the small islands adjacent thereto, as is not claimed by the Government of

[28] July 14, 1883.

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the Netherlands." The fourth recommended negotiating with the government of France for the control of the New Hebrides "in the interest of Australasia." The fifth recommended measures for defraying a share of the cost incurred in giving effect to the previous resolutions. The sixth protested "in the strongest manner" against the transportation of "large numbers of relapsed criminals to the French possessions in the Pacific," while the seventh expressed "a confident hope that no penal settlement for the reception of European criminals will long continue to exist in the Pacific," and invited the British government to make serious representations on this subject to the government of France. These resolutions were communicated to the secretary of state for the colonies with the request for "such action as Her Majesty may think proper to direct, with a view to giving effect to the earnest desire of her loyal subjects in Australasia."[29]

The Sydney declarations are often referred to as the Australasian Monroe doctrine. The first resolution appeared to be an enunciation of that doctrine in its most pronounced form. As Secretary of State John Quincy Adams, President James Monroe, and some of their successors attempted to erect a protective fence round the western hemisphere, the responsible statesmen and officials of Australia and New Zealand proposed that Englishmen and only Englishmen should preëmpt the South Pacific. The *Pall Mall Gazette* reported:

> First and foremost, this clear, articulate utterance of our kinsfolk at the Antipodes declares to all the world, "Hands off the Pacific!" Not even the famous MONROE doctrine so justly dear to Americans can exceed the uncompromising audacity of this Australian deliverance. There is no mincing the matter, no compromise, no beating about the bush. The safety and well-being of the Australasian colonies is declared to demand the prohibition of the further acquisition of dominion in the Pacific south of the Equator by any foreign Power. It is hands off all around—with the exception, of course, of the hands of Englishmen. To Frenchmen, Germans, Americans, and all other "foreigners," the whole of the Pacific south of the Equator is to be forbidden ground. [The Australians] demand that while we shall be free to annex when, where, and how we please, all other nations shall be warned off as trespassers.[30]

[29] New South Wales. *V. & P.*, 1883-1884, IX, 13-14; Victoria, *V. & P.*, 1884, II, Paper no. 25, pp. 14-15.

[30] *Pall Mall Gazette*, London, Dec. 6, 1883.

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James Service later declared:

> It was no lust of territory or expectation of the immediate settlement of the islands of the Pacific, [which actuated the members of the convention]; the object they had in view was to keep the English people in these distant lands as far removed as possible from the dangers arising out of European complications, and it was as much in the interest of the Empire as in that of these colonies that these resolutions were adopted. By keeping the colonies comparatively safe, through their very remoteness from neighbours who might, through European complications and Imperial necessities, become enemies, the loyal people of Australasia would have been comparatively free to lend their assistance to the dear old mother land in any struggle in which she might be engaged.[31]

### *Reception of the Doctrine*

On receipt of the resolutions of the Sydney Convention the colonial office promptly and courteously replied that they would be carefully considered. The Earl of Derby, concerned over public opinion at home as well as in the Pacific colonies, attempted to steer a cautious course on the New Guinea question. Only nineteen days after McIlwraith's annexation proclamation, Derby expressed to Mr. Gladstone the opinion "that Australia will be unanimous on this question, and we must be careful not give [sic] more offense there than we can help."[32] On July 2, speaking in the House of Lords in vague and general language with reference to Eastern New Guinea, the colonial secretary admitted that "undoubtedly we should not view it as a friendly act if any other country attempted to make a settlement on that coast."[33] But his annoyance—even disgust—with the Sydney declarations was not suppressed in a private letter to the prime minister, which contained the following:

> What can be said in favour of the Monroe Doctrine laid down for the whole South Pacific? a distance of more than 5000 miles. Australia cannot be secure if any other power is allowed to establish itself between the Australian coast and South America! This is mere

[31] Premier Service's memorandum for the governor, February 6, 1885, no. 85/467, Premier's Dept., Melbourne.

[32] Derby to Gladstone, April 23, 1883, Private Gladstone MSS, quoted by William Osgood Aydelotte, *Bismarck and British Colonial Policy—The Problem of South West Africa, 1883-1885* (Philadelphia, 1937), p. 12.

[33] Hansard, *Parliamentary Debates*, 3rd series, vol. 281, col. 17.

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> raving: and one can scarcely suppose it to be seriously intended: though it is hard to fix the limits of colonial self-esteem. . . . The notion that other powers, and other nationalities, may have rights which an Australian is bound to respect, does not seem to have entered the colonial mind.

Since, however, the united voice of Australasia had expressed itself, Lord Derby felt the necessity of taking some action to quiet the fears, real or affected, of the Australians. He would claim formally the coast of New Guinea not already in the hands of the Dutch; for "we could not as matters stand allow any other state to seize a part of the island; the Australians would threaten secession if we did, and everybody would be against us."[34]

With the "condemnatory part" of this letter Mr. Gladstone was in "complete sympathy" and agreement, but he was not inclined to bow to the requests of the Australians. In his opinion it was injudicious to raise the question of a protectorate in New Guinea as part of the reply to the "preposterous proposals of the Convention." In their extreme demands the delegates had "supplied the best possible ground for a negative answer."[35] Nevertheless, Derby, under pressure from the agents general, urged the prime minister to leave the question of a protectorate open in his replies in the House of Commons. The colonial secretary was sure "that a refusal to meet what is now the wish of all Australia would have very unpleasant consequences out there: and indirectly would do much to damage us at home."[36]

Not all the members of the cabinet were as resentful of the convention's declarations as were Gladstone and Derby. Chancellor of the Exchequer Hugh Childers admitted "that premature enlargements of territory are mischievous, and some proposals in this respect may have been extravagant. But England's colonial empire must expand, and one of the best proofs of statesmanship is the wise regulation and guidance of that expansion."[37] Lord Carnarvon, sympathetic towards the appeals and protests of the Australasians, nevertheless, held that the third resolution went

[34] Derby to Gladstone, December 7, 1883, in Aydelotte, *op. cit.*, p. 13.

[35] Gladstone to Derby, December 8, 1883, in *ibid.*, pp. 14-15.

[36] Derby to Gladstone, July 31, 1884, in *ibid.*, 15.

[37] *Pall Mall Gazette*, December 7, 1883.

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to an unnecessary length. He thought that the time had come to affirm the queen's sovereignty on large portions of the New Guinea coast, but he did not see that Britain was "yet either compelled in self-defence, or induced by self-interest, to annex the interior of that vast and unknown territory. Annexation has a moral as well as a material and commercial side; and it means not only acquisition of rich lands, and harbours, and minerals, for the want of a more civilized or commercially minded people, but of duties to be performed to the native races who pass under our protection." This task, he felt, the British were not as yet prepared to undertake.[38]

In an interview of July 2, 1884, with the colonial secretary, the agents general of New South Wales, New Zealand, Queensland, and Victoria stated that the colonies would guarantee the £15,000 required for administering New Guinea and sought information on whether the protectorate promised in dispatches of July 11, 1883, and May 9, 1884, would be declared, as well as on what course would be pursued with regard to other islands in the western Pacific. Although Derby interposed that "Her Majesty's Government had never undertaken to assume any formal protectorate over New Guinea," he admitted that, owing to its proximity to the Australian continent, that island stood in a somewhat different position from the others which formed the subject of discussion. Since Prince Bismarck's announcement of a colonial policy for Germany[39] was "undoubtedly very serious," the British government felt impelled to take some immediate action. When asked what other islands the colonies proposed should be dealt with, the agents mentioned New Britain, New Ireland, the Solomon, and Santa Cruz archipelagoes. His lordship could not share the agents' fears as to the occupation of these islands by other nations, or that their possession of these groups would affect Australia; nor did he think that the British "could reasonably assert what amounted to a Monroe doctrine over the Western Pacific." For the control of the labor

[38] Sir Arthur Hardinge, *The Life of Henry Howard Molyneux Herbert, Fourth Earl of Carnarvon 1831-1890* (3 vols., London and New York, 1925), III, pp. 125-126.

[39] Bismarck, *Die Gesammelten Werke* (Berlin, 1924-35), XII, pp. 471-475. *Kölnische Zeitung*, June 24, 1884.

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traffic Derby was disposed to erect some kind of mixed tribunal.[40]

Mr. Murray Smith, Victoria's agent general, interjected that it should be clearly understood that this would not satisfy the Australasian colonies. They desired "the extension of British authority, under some form of protectorate, over New Guinea and the islands of the Western Pacific, which would preserve them from being appropriated by Foreign Powers, and secure them eventually for Australasia." Lord Derby retorted in that case what the agents general wanted was the whole South Pacific; he insisted that the British had no right to dictate to other nations that they should not form settlements there, adding that grave responsibilities and complications would follow from such a course as that proposed. The agents strongly urged that, while they could not object to the right of appropriation being claimed by other powers over unoccupied groups of islands, they were desirous of securing these from such appropriation while there was yet time to do so.[41]

In New Zealand, where concern for New Guinea was negligible, Premier Robert Stout, successor to Major Harry A. Atkinson who represented the colony at the Sydney Convention, proposed, instead of a Monroe doctrine for the Pacific, an Anglo-American confederation. His memorandum on the subject doubtless was intended to counter a more aggressive policy advocated by Colonial Treasurer Sir Julius Vogel whose objective was British annexation of Tonga and Samoa.[42] Stout, however, recommended a broader approach comprehending the coöperation of other powers interested in the Pacific. He averred:

> It is hardly to be expected that what is, in the United States, termed the "Monroe Doctrine," namely, that the whole of the Pacific Islands shall belong practically to the Australasian Colonies, will be listened to by such a Power as France or Germany, or, perhaps, even by the United States. We have not in Australasia the force to enable Colonies to be seized from the European Powers I have named; nor,

[40] Minute of an interview on July 2 . . ., enclosure in Bell to premier, no. 318, July 15, 1884, Despatches from Agent General, 1884, Prime Minister series 5, vol. III, Prime Ministers Dept., National Archives of New Zealand. Printed in New South Wales, *V. & P.*, 1883-1884, IX, 172-173.

[41] *Ibid.*

[42] Julius Vogel, "Questions Relating to Federation and the South Sea Islands," confidential, October 6, 1884, Stout Papers, Official Correspondence, Alexander Turnbull Library, Wellington.

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> had we the force, would it, perhaps be advisable to use it. But if we ask those great Powers to leave convictism out of their colonizing schemes, and to enable their Colonies to unite with a Pacific Confederation, our asking might be listened to. . . . We would not then be merely parts of the English nation, grasping the whole of the Pacific, ignoring the colonising functions of other nations, but a new nation, willing to take within our borders immigrants from all countries and Colonies belonging to other nationalities.[43]

Premier Stout was correct in his observation that the powers entrenched in the Pacific would pay no respect to the declarations of the Australasian colonies. To France and Germany the nationalistic formula was anathema. The former considered it preposterous that British colonials should attempt to dictate the policy Paris should follow toward the *recidiviste*. Representatives of German commercial companies operating in the Pacific, especially Theodor Weber, a resident agent in Samoa of the *Deutsche Handels und Plantagen Gesellschaft der Südsee-Inseln,* were alarmed over Queensland's attempt to annex New Guinea. After the Sydney Convention the German firms, who saw in the resolutions a fantastic proposal to form a single colossal island empire extending from Australia and New Guinea to Samoa, protested that further annexations in the South Seas would involve them in heavy losses and urged Berlin to protect German landowners in the Pacific.[44] Otto von Bismarck found the "grasping policy" of the English colonists as offensive and irritating as the original "insolent" Monroe "dogma."[45] He rejected Australia's claim to monopolize New Guinea and other unappropriated islands of the Pacific.[46] The Berlin newspapers also generally denied that the British were entitled to annex New Guinea.

[43] Robert Stout, "Memorandum for Cabinet," October 10, 1884, in *ibid.*

[44] T. Weber to Stubel, August 6, 1883, enclosure in consular report from Apia, August 8, 1883, Weissbuch, *Deutschen Intersessen in der Südsee,* II, p. 703; *cf.* pp. 705-706; *Stenographische Berichte,* 1884-85, VI.

[45] Wolf von Schierbrand, *Germany, the Welding of a World Power* (New York, 1902), p. 353. *Cf.* Alfred Vagts, *Deutschland und die Vereinigten Staaten in der Weltpolitik* (2 vols., New York, 1935), II, p. 1705.

[46] *Kölnische Zeitung,* June 23, 1884; Victoria, *Parliamentary Debates,* 1884, LXV, p. 107. *Cf.* Marjorie G. Jacobs, "Bismarck and the Annexation of New Guinea," Australia and New Zealand, *Historical Studies,* V (November 1951), pp. 14-26.

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Further opposition to aggrandizement in the Pacific came from a state too impotent to be recognized as having a commanding voice in international affairs. "His Hawaiian Majesty's Government," in a protest of August 23, 1883, made an earnest appeal to the governments "to recognize the inalienable rights of the several native communities of Polynesia to enjoy the opportunities for progress and self-government."[47] Moreover, in an effort to influence the delegates to the forthcoming Sydney conference, Audley Coote, Hawaiian consul in Hobart, on November 11, informed the chief secretary of Tasmania that it was the wish of his government that instead of annexing islands in the Pacific, England, France, Germany, and the United States "should join in a Protectorate over the various islands and archipelagoes of Polynesia, in a similar manner that Samoa had been governed. . . ."[48] The consul's appeal carried no weight and exercised no influence whatsoever on the proceedings of the conference, while his interference was resented. In New Zealand Hawaii's action was regarded by some as instigated by the United States. It seemed difficult to believe that such a diminutive state, of its own initiative, would have issued a sort of Monroe doctrine for the Pacific while claiming for itself by virtue of its "Primacy" in Polynesia and concern for cognate races, the right to intervene with advice and assistance.[49]

Actually, the United States refused to join Hawaii in diplomatic representations. Secretary of State Frelinghuysen, who held "that the American eagle should not strain its naturally fine voice by shrill and prolonged screaming on small occasions," guardedly stated that the attitude of Washington towards the distant outlying groups of Polynesia was necessarily different from that toward the intimately connected Hawaii in the North Pacific. He observed that the New Hebrides, the Solomon

[47] Cabinet Council Minute Book, 1874-1891, pp. 290-291, Archives of Hawaii.

[48] New South Wales, *V. & P.*, 1883-1884, IX, p. 32; *Hawaiian Gazette*, Honolulu, Sept. 5, 1883; *Pacific Commercial Advertiser*, Honolulu, September 7, 8, 10, 1883. "Polynesia" is here used in a broad geographical sense and included some of the Melanesian islands, particularly those adjacent to northeast Australia.

[49] *New Zealand Herald*, Auckland, February 4, 1884, Annexation and Federation Supplement.

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Islands, and the groups adjacent to the Australian colonial system

> are geographically allied to Australia rather than to Polynesia. At no time have they so asserted and maintained a separate national life as to entitle them to entrance by treaty stipulations and established forms of competent self-government, into the family of nations, as Hawaii and Samoa have done. Their material development has been largely due to their intercourse with the Australian System near which they lie, and this Government would not feel called upon to view with concern any further strengthening of such intercourse, when neither the sympathies of our people are touched, nor their direct political or commercial relations with those scattered communities threatened by the proposed change. [Moreover, President Chester A. Arthur did not] regard the matter as one calling for the interposition of the U. S., either to oppose or support the suggested measure.[50]

Both the American and the Australasian Monroe doctrines were pronunciamentos of the future and neither perceptibly changed the course of contemporary history. Nor were the ambitions of the Sydney Convention statesmen ever completely realized. The primary significance of the declarations at the time of their promulgation was that they served as capstones to a foreign policy which had been gradually emerging in their respective areas. The original doctrine audaciously proclaimed an American system for the New World; the second enunciated in strident terms an Australasian formula for the South Pacific and indicated that future annexations therein concerned "the collective body of Australasian settlement."[51] This expression of youthful bravado was safely trumpeted to the world behind thousands of miles of insulating sea patrolled by the indomitable British navy.

Nevertheless, the declaration was not mere braggadocio, for in the 1880's there was coming of age in the southern continent a strong "Young Australian" party whose members were convinced that "the destiny of Australia was to be the trustee of the Pacific" and whose motto was "Australia for the Australians." This phrase meant, according to one exponent, that "the policy adopted by Australia should be framed in the first instance with

[50] Frelinghuysen to Carter, December 6, 1883, U. S. Dept. of State, Hawaiian Legation, Notes to, I, National Archives of the United States.

[51] *The Times*, London, December 7, 1883.

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an eye to Australian interests; and the first of these interests was that no foreign power should be allowed to interfere with Australasian territory."[52] Naturally, "Australasian territory" was defined as latitudinously as Australians desired, just as the "Western Hemisphere," from time to time, has been interpreted to include what American statesmen have wished the area to comprehend. Although the Sydney Convention statesmen voiced aspirations a generation in advance of their time, they consciously initiated a policy to guide and govern future annexations in the South Pacific.

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[52] Herbert A. Strong, University College, Liverpool, "Our Australian Policy," letter of January 8, 1885, to the editor, *The Globe*, London, January 10, 1885.

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# REVIEWS

*Laos: Its People, Its Society, Its Culture.* Edited by FRANK LEBAR and ADRIENNE SUDDARD. New Haven, Human Relations Area Files Press, 1960.—294 pp. $6.50.

The protracted crisis in Laos has drawn attention to the inadequacy of American policy in that remote and hitherto placid Buddhist kingdom. Since the Geneva Agreements of July, 1954, which brought the Indochinese civil war to an end, the United States has conducted an enormous program of economic assistance and military support for Laos, buttressed by the more traditional techniques of diplomacy, in an effort to safeguard and strengthen that country against communist encroachment. We have expended nearly $300 million in the process, which on a *per capita* basis is the largest American aid program anywhere in the world.

An appraisal of the results as of spring 1961 gives scant cause for optimism concerning the validity of United States policy in Laos, and by extension in the developing countries generally. This is not the place to pontificate about possible policy alternatives, the might-have-beens of the last seven years. But clearly we have misjudged the situation. The main task in Laos is not simply to provide military support or even to promote economic development. It is rather to build a nation.

After many years of preoccupation with the dynamics of economic growth, academic specialists are at last beginning to pay increasing attention to the problems of political development in Asia, Africa and Latin America. We are still a long distance from a workable theory of political growth in the backward countries, but there is growing recognition of the need for such theory as a guide to effective policy. One hopes that this awareness will eventually penetrate even the layers of government in Washington.

The development of general theory in this field is grievously hampered by lack of adequate knowledge. We simply do not know enough about the developing countries. Some measure of the dimensions of the problem can be found in the excellent study edited by Mr. LeBar and Miss Suddard. This is the eighth volume to appear in the Survey of World Cultures series issued by the Human Relations Area Files of New Haven. Studies in this series, "though augmented by original research, are pri-



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marily a collation and synthesis of the best and most authoritative materials, published and unpublished, on the societies selected." The result is by far the best compendium on Laos available in English. Typical chapters deal with Geography and Population, Religion, Education, Political Dynamics, Foreign Relations, Character of the Economy, Labor, Financial System, Agriculture, and National Attitudes.

Two things emerge from these informative pages. First, we know altogether too little about Laos. The editors would, I feel sure, emphatically agree that their study is only a beginning. A great deal of work needs to be done on all phases of Laotian history, polity, economy and culture. Second, Laos is not a nation in the sense that the countries of Western Europe or the United States are nations. The task of nation building has yet to be accomplished.

These two conclusions, implicit rather than explicit in the volume here reviewed, are closely intertwined. However pressing the need for a general theory of political growth in the developing countries, we must first have the raw materials of knowledge—intimate and in depth—concerning these countries before useful theoretical work becomes possible. In this mature and sophisticated introduction to Laos, LeBar and Suddard have provided an admirable beginning for the indispensable research that remains to be done on one of the least known countries of Asia.

WILLIAM HENDERSON

COUNCIL ON FOREIGN RELATIONS

*Between War and Peace: The Potsdam Conference.* By HERBERT FEIS. Princeton, Princeton University Press, 1960.—viii, 367 pp. $6.50.

Modern diplomacy, both in scope and in content, threatens to overwhelm the historian accustomed to having a beginning, a middle, and an end to the subject he studies. Herbert Feis, who bravely waded into the documents of the Second World War to write its diplomatic history even before the sound of the guns had stopped reverberating, has, with this volume, almost completed his self-appointed task. One more is to be published shortly. Each of his books in turn—*The Road to Pearl Harbor, The China Tangle, Churchill-Roosevelt-Stalin*—seemed to be only a prelude to the next. This characteristic of these works is no charge against Feis, but rather a true representation of the

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diplomacy they describe: bold in conception and inconclusive in substance.

*Between War and Peace* tells the story of what happened in that critical hour of history when the Nazis were falling, and the leadership of the West was being transferred from Roosevelt and Churchill to Truman and Attlee, and when the die was being cast for disillusionment and mutual distrust among the victors. For us—at least in the short run—the Potsdam Conference failed to approximate our hope, namely, "that each member of the [wartime] coalition would be responsive to the interests and wishes of the others."

The optimism of the Allies that had seemed to foreshadow so much that was promising in the earliest of the summit conferences was by this time gone. Even while the Big Three were holding forth at Yalta, the Communists were seizing Poland. Now the journey of Harry Hopkins at the instance of Harry Truman in order to see Stalin and attempt to assuage his stubborn stand was an augury, when it failed, of further failure. It had been predicated, like so much of our diplomacy, on the belief that tact and patience would mollify the Russians.

How history will assess the American, and to a lesser degree the British, miscalculation may not yet be clear. But it came at a high price in the decade and a half which followed. Primarily the fault lay in our conception of war as something separate from "ordinary" national behavior—something for which one prepares with abandon in due season and which comes to an end with recognizable flourish and satisfaction. Churchill chose the code word Terminal to denominate the Potsdam Conference. Yet, as Feis observes, the Conference marked not the high point of a glorious triumph on the fields of battle, but "the end of the line of close collaboration by which the coalition had achieved victory." It also marked the last display of America's naïve assumption that good will and a readiness to accept provisional solutions was an answer to the Soviet Union which was reaching out not for accord but for populations and territories.

Feis shows us, stone by stone, the elements that went into the making of the incomplete structure of peace. His research is thorough and exhaustive and convincing. Little more could be done now, although he knows that certain materials in the Truman Library are still to be made available. One day, of course, the Soviet archives may add another dimension to the story; nevertheless, the lessons to be learned need not await that eventuality.

Feis does not refrain from speculating on how Potsdam might

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have been made more successful. Taken collectively, as he says his points must be considered, they are: First, that the extension of Polish administration should not have been permitted beyond the eastern Neisse. Second, that the joint occupation and control of Germany should have been shorter—"only long enough to carry out definite measures such as disarmament, the destruction of the Nazi system, and arrest of war criminals." Third, that upon the completion of these purposes the zonal system should have been ended and foreign troops withdrawn. Fourth, that the four powers should have worked out a way of keeping Germany permanently neutral and disarmed. Fifth, that the main source of German reparation payments should have been Germany's productivity.

This is not the place to argue the validity of these suggestions or to ruminate on how the course of recent history might have been diverted. It is enough to know we erred badly, trapped by our traditional ways of making war and peace. The only guide for tomorrow Feis offers is that, on behalf of "survival itself," we must find a way to "transcend the usual run of history." Caught up in the toils of history, as all men are, that search will not end quickly.

HENRY F. GRAFF

COLUMBIA UNIVERSITY

*Indonesian Independence and the United Nations.* By ALASTAIR M. TAYLOR. Ithaca, Cornell University Press, 1960.—xxix, 503 pp. $7.50.

As the author explains in his preface, "this study concerns itself with the struggle for Indonesian independence, but from a particular point of view—namely, the involvement of the United Nations." It is not a history of Indonesian nationalism. Rather it is an attempt to clarify the issues involved in the postwar struggle for Indonesian independence, the rôle of the United Nations in that development, and the interplay of forces which finally resulted in the emergence of an independent, unitary state.

The importance of this study, to scholars and practitioners alike, does not need to be argued. The Indonesian question was one of the first to be submitted to the United Nations in the initial year of its existence. It was the first serious test of the ability of the organization to bring fighting to an end in a situa-

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tion of international concern and to achieve an acceptable settlement of the political issues involved. In the course of dealing with this question, the Security Council developed and utilized methods which have come to be normal United Nations operating procedures. Furthermore, the United Nations was at this early time faced with a kind of situation which has been increasingly common in the postwar world—the struggle of a new and politically inexperienced nation for independence. Assisting in the birth and early upbringing of new states has come to be one of the important functions of the Organization. The Indonesian question provided its first introduction to the difficulties of the rôle, not the least of these being the finding of a common ground between those who insist on the exclusive responsibilities of the colonial power and those who regard the satisfaction of nationalist aspirations as a legitimate concern of the United Nations.

Dr. Taylor's study is based in the first instance upon his personal experience as a member of the United Nations Secretariat serving with the Security Council's field machinery in Indonesia. This experience has been supplemented by an exhaustive study of available documentation, at United Nations headquarters and in national capitals, and by interviews with persons with special knowledge of events and who in a number of instances played significant rôles in the development of the drama.

The author's method is a combination of the historical and the analytical. In the first three parts—somewhat more than 260 pages—he gives a historical account of events from the declaration of Indonesian independence on August 17, 1945, to the admission of Indonesia as the sixtieth member of the United Nations on September 28, 1960. This is not a mere chronology, however. The author portrays with great clarity and detail the origin of the conflict, the issues that separated the parties, and the complicated sequence of negotiations, impasses, military operations, and United Nations efforts at pacification and settlement which preceded the final solution. In the two concluding parts, the author analyzes and evaluates the policies and tactics of the two parties, the Netherlands and the Republic of Indonesia, and the rôle and functioning of the United Nations.

In explaining the Netherlands' position the author emphasizes the difficulty which the Government faced in harmonizing the attitudes generated in three different areas of decision: the attitudes of those concerned with military operations, administration and negotiation in Indonesia; those of the political parties

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and members of the States-General in The Hague; and the attitudes of those who were actually engaged in the discussions and negotiations at Lake Success. In a very real sense, as the author recognizes, the tragic aspect of the Indonesian conflict was that a government committed to an enlightened long-range policy of federalism and supported by a public opinion at home which was prompted by a sense of rectitude and fair-dealing, should have been placed in the situation where it got scant credit for its good intentions and found itself continually on the defensive, first in denying the competence of the United Nations and then in opposing the decisions of the Security Council. No doubt the Netherlands' misfortune was to some extent due to the excessive stubbornness, suspicion, and lack of imagination which Netherlands officials displayed, but in large measure it was the result of the failure of Netherlands democracy, under the strain of the War and postwar period, to adjust itself with sufficient speed and flexibility to a revolutionary situation.

In evaluating the part of the United Nations in the achievement of Indonesian independence, Dr. Taylor shows himself a realist without emotional commitments that warp his judgment. He recognizes the part played by purely material factors, such as relative military strength and economic resources, in bringing about the final result. He gives full credit to pressures exercised by individual governments, especially by the United States, in convincing the Netherlands Government that it should accept the additional "six principles," thus making the Renville Agreements of January 17, 1948, possible, and later through Cochran in getting the Netherlands Government to agree to the final Round Table Conference and settlement. Nevertheless, on the basis of his very detailed and objective study of the record, Dr. Taylor is convinced that the United Nations "was able to perform what the Powers that brought it into existence could not have achieved singly or in disparate groups." To this reviewer, this conclusion seems fully justified.

The study is a model for analyses of other disputes and situations with which the United Nations has been or will be concerned. Furthermore, until some time has elapsed and official records not now available are made open for inspection, this can be regarded as a definitive study. It is a major contribution to our understanding of the complex forces that operate in the development and handling of such disputes and situations of international concern.

LELAND M. GOODRICH

COLUMBIA UNIVERSITY

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*The West Indies Federation: Perspectives on a New Nation.* Edited by DAVID LOWENTHAL. Published in coöperation with American Geographical Society and Carleton University by Columbia University Press, New York, 1961.—viii, 142 pp. $3.00.

The dramatic advance to independence of new Africa nation-states, an almost weekly event, may be the chief reason for American indifference to the 1958 federation of the British West Indian islands even though they are on our own doorstep and are likely to obtain full independence and United Nations membership this year. This small book provides a remedy for indifference and ignorance and can be highly recommended to the student of comparative government as well as to the general reader. It is an admirable introduction to the archipelago and its problems.

It consists of four sections by different authors. The first, Hugh W. Springer, writes on "The West Indies Emergent: Problems and Prospects." The author, an Oxford-educated Barbadian, is eminently qualified to handle this topic for he was a moving spirit in the political and trade union movement and the nascent West Indian nationalism of the 1930's. He outlines the problems created by too rapid population growth, changing production and trade patterns and the difficulty of arranging a concerted attack upon these problems because of island disparities in resources and skills and the psychological as well as the physical distance between them. Despite all this he concludes that progress is being made and that a genuine nationhood can and will be achieved.

Professor Gordon Merrill of Carleton University (Ottawa, Canada) writes of the West Indian past and its survival. He gives a compact account of West Indian geography and history. He is the most pessimistic of the four authors as to the probability of success for the new federation.

Professor Douglas G. Anglin, also of Carleton University, writes on political development, mainly on recent events and on constitutional aspects. He is right in emphasizing the unusual weakness of the federal government symbolized by the lack of federal postage stamps and the absence of a unified currency for the area. Federal impotence together with the "states-rights" attitude of Jamaica and, to some extent, of Trinidad, have led some to think that the federation may break up before it can become established. The reader may feel that Mr. Anglin himself is only half-convinced of the optimism he expresses in his final paragraph.

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The longest section is by David Lowenthal, research associate of the American Geographic Society. He begins with some depressing demographic statistics and examines the color-class complex which has led to culturally exclusive classes and a lower class (90 per cent of the population) which remains a "psychological minority." Insularity has persisted despite federation and these people ". . . are, as yet, hardly West Indian at all." Although this is all perfectly true, the reviewer believes the whole truth to be more complex and rather more encouraging. Social mobility is increasing and the vigorous labor parties in many places have given the lower classes a sense of political participation that augurs well for the success of West Indian democracy. Perhaps Mr. Lowenthal would agree with this estimate for he ends on a moderately hopeful note.

The study concludes with useful tables of area, population, vital statistics, trade, production and income in all the units. There is also a select bibliography and an index.

All four studies are well written, consistently interesting and manage to pack an astonishing amount of information into a small space. Mr. Springer's essay is so incisive and felicitous in style that one may express the hope that his duties as Registrar of the University College of the West Indies may allow him more time in the future for writing in the field of politics.

MORLEY AYEARST

NEW YORK UNIVERSITY

*The Kremlin and World Politics: Studies in Soviet Policy and Action.* By PHILIP E. MOSELY. New York, Vintage Books, 1960.—viii, 557, x pp. $1.65.

Philip Mosely has long been one of the most perceptive and objective observers of the U.S.S.R. Consequently he has been so drawn into public service that he has not had a chance to write the definitive and unified study of Soviet policy which has been one of his goals. It is thus most fortunate that he has been persuaded to select essays he has written over twenty years and to put them in one volume. The result, of course, is impressive as a demonstration of his enduring expertise and timeless analysis, and as proof, if such were needed, that Bolsheviks do change, but not in the way the unobservant expect, nor in the way one might have preferred.

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Professor Mosely has by no means confined himself to scholarship and observation in his analysis of the Russians. He has had extensive negotiating experience, and some of his most fascinating passages are descriptions of how Russians behave at the green table. The conclusions one draws from them are sobering indeed, especially in the context of a highly fissionable world in which communication and agreement on arms control are as imperative as they seem remote. Anyone who has dealt officially with the representatives of the U.S.S.R. can corroborate Mosely's experiences and can probably add some grim ones of his own. Soviet and Western diplomats and statesmen live in very different worlds insofar as policy formation, negotiation, contact, and interpretation of data are concerned, because they have totally different philosophies and aims. Those who sit on the periphery of the world struggle and give well-meaning advice should themselves have some experience of dealing with Soviet people at first hand. If fortune does not send them this opportunity, they at least could profit by reading Mosely.

Naïveté in approaching the U.S.S.R. in negotiations usually does not last long, however, and the observant will duly note that, as Mosely says so well (p. 299), "Soviet leaders have not shown an inability to recognize basic facts of international life, grounded in realities of power." This distinguishes them in their foreign policy objectives from the fanatical fascists whose faulty military judgment and Kamikaze attitudes caused so much grief. But it also means that the Bolshevik determination to succeed in their objectives can force the Russian people to create the power with which their masters periodically threaten the world.

Mosely's analysis is thus ever realistic, and his call for unity, firmness and a clear program of action as the only antidote to Soviet power is persuasive and unassailable. He makes it clear that we should expect rocket rattling, smiles of peace and friendship, and all conceivable variants in between, sometimes alternately and sometimes together, but beamed at a variety of targets. The Soviet objective will be constant, Soviet power will grow, and Soviet methods will become more complex and bewildering as confidence becomes stronger with power. All this is quite clear in these essays. The one area of policy and tactics on which the contemporary reader might wish for somewhat more coverage is the relationship between the Soviet Union and Communist China. Most of Mosley's penetrating comments on this aspect of international communism date from 1956, and one hopes that the recent conference of Communist parties will

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inspire Professor Mosely to comment further. He should have a wide audience.

WILLIS C. ARMSTRONG
UNITED STATES EMBASSY, OTTAWA, CANADA

*The Genius of America.* By SAUL K. PADOVER. New York, McGraw-Hill Book Company, 1960.—viii, 369 pp. $6.50.

*The Jefferson Image in the American Mind.* By MERRILL D. PETERSON. New York, Oxford University Press, 1960.—x, 548 pp. $8.50.

These two books offer an interesting study in contrasts. Both deal with subject matter commonly classified as American political thought; both deal with figures about whom much has already been written, but here their similarity ends. The author attempting a general work in American political thought is faced with two possibilities. He can proceed chronologically from period to period, discussing the successive epochs in terms of all the relevant influences—individual, institutional, ideological, and so on—achieving general coverage at the expense of depth. Or he may choose the biographical approach, treating a selected group of major figures to more intensive consideration, sacrificing, in the process, the continuity of the other method. Mr. Padover has chosen the second alternative.

In *The Genius of America* he presents biographical sketches of nineteen persons "who have had a special impact on the formation and development of what is historically a unique polity: the United States of America." These essays which range in length from nine to twenty-seven pages, preceded by an introductory chapter, seek to epitomize what the author considers to be the dominant rôle of each character. For example, Jefferson is entitled the American as Democrat, Marshall, the American as Federalist, John Dewey, the American as Pragmatist, Wilson, the American as Liberal, and so on; Lincoln is accorded preëminence as simply the American.

If one can rely upon impressions that remain after a careful reading of his essays, Mr. Padover has a special affection for Jefferson, Holmes, and Franklin D. Roosevelt. In any event, these "profiles" come alive with a vividness and warmth that the others do not quite achieve. Among the non-political figures, the essays on Henry James and John Dewey are particularly perspicuous with the one on Emerson warranting honorable

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mention. The entire book bears the mark of careful thought, discriminating selection of material and good writing. In preparing his pieces Mr. Padover has availed himself of recent scholarship. His factual materials and interpretations though conventional are highly pertinent; they are likely to prove particularly useful to the general reader and for undergraduate courses in this area.

Casting his work in a mold that fits neither of the alternatives indicated above, Mr. Peterson has written a book about Thomas Jefferson that will have to be included in any future bibliography about that controversial figure, but he has done more than that: he has made a major contribution to the general literature on American politics. No serious student of American political ideas and institutions can fail to benefit from a careful reading of this detailed, closely reasoned and skillfully executed study.

No other single figure in American history quite compares with Jefferson where the question of his own career is considered in the broader context of his continuing impact upon the political thought of successive generations. More has been written about Lincoln, and the literary output already inspired, provoked, or merely occasioned by Franklin D. Roosevelt suggests that he may one day rank with Lincoln in this respect. Jefferson's case is different. Although as Professor Peterson's excellent selective bibliography demonstrates, he has received much attention from the writers, it is a different kind of attention: it is less anecdotal, personal, sentimental; more doctrinal, polemic, political. Lincoln, in modern terminology, represents a father figure; Jefferson, a political symbol.

The declared purpose of the book, succinctly expressed in the title, is to depict Jefferson not so much as he actually was as the way later generations of Americans, sometimes with axes to grind, have interpreted him to be. Sometimes his interpreters have glorified him, but not always; almost as frequently they have subjected him to unrestrained abuse. Paradoxically, there have been times when bitter controversy has resulted from claims and counter-claims advanced by contending groups, each eager to establish the legitimacy of its particular cause by nailing the banner of Jefferson at the top of its own masthead.

The main body of Peterson's book covers the period from the publication of Jefferson's *Memoirs* in 1829 to mid-twentieth century. All major works—historical, biographical, polemic—which deal with Jefferson come under his searching eye. What scholars of varying degrees of objectivity have had to say covers only one aspect of the Jefferson image, however. Politicians have

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willingly used the work of scholars when it has served their particular purposes; just as often they have produced their own interpretation of Jefferson's principles. All this makes for a body of subject matter that varies widely in literary excellence but not in interest. Hardly a major figure in the historical development of the politics and government of this country from 1789 to 1950 escapes Peterson's attention. In the process Jefferson is not only revealed in added dimensions, he acquires a broader relevance; equally important, successive epochs of America's growth emerge in sharper outline. By using Jefferson, more accurately the Jefferson image, as a continuous though variable reference point, Mr. Peterson compounds the power of his analytical apparatus thus bringing into the field of inspection phenomena not previously studied in the same perspective.

In a work that encompasses so many periods, individuals and issues, some unevenness in scope and depth of treatment is unavoidable. A case in point is the treatment of the Progressive movement from the turn of the century until the first world war—one of the least satisfying sections. The problem of classifying Wilson and of locating his exact position on the Hamilton-Jefferson continuum is difficult. The absence of a solid, stable corpus of Jeffersonian doctrine is paralleled by the spongy character of Wilson's own operating premises. If the argument in this instance is less lucid and convincing than elsewhere, the elusive character of the subject matter affords a partial explanation.

Some readers may indict Mr. Peterson for talking much about Thomas Jefferson but failing to reach clean-cut conclusions concerning him: where he stood, whether this or that claim about him was true or false. If he has not compiled a handy answer book he has done something more useful. He has exposed not merely the anatomy but the physiology of the American political organism.

LAWRENCE H. CHAMBERLAIN
COLUMBIA UNIVERSITY

*American Rights: The Constitution in Action.* By WALTER GELLHORN. New York, The Macmillan Company, 1960.—vi, 232 pp. $4.50.

Fortunately Professor Gellhorn apparently overlooked Leo Pfeffer's excellent book, *The Liberties of an American* (1956), and wrote *American Rights* because he could not find a fresh, non-technical presentation that would provide the general reader

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with a better understanding of the constitutional law of civil liberties. But *aficionados* of the Supreme Court's work as well as intelligent lay readers will appreciate this book, because Professor Gellhorn has a rare and enviable gift for pellucid exposition of the complex and controversial which he blends with just the right touches of passion and judiciousness. He can say more in a paragraph—with conviction, wisdom, and distinction—than most can say in a page.

Although he explains how vague are the rights that are constitutionally protected and how they achieve significance and solidity through decisions by judges who are less than impersonal, he does not follow the behavioralists who analyze voting blocs on the Court. Nor does he discuss the conflict among the justices in relation to the preferred-position theory of certain freedoms or in relation to the issue of judicial self-restraint vs. activism. It is clear, however, that if he were a member of the Court he would strengthen the Warren-Black-Douglas side.

In this book he is concerned with the work of the Court as a whole and with the constitutional status of the various rights that he selects for discussion. The topics covered are the writ of habeas corpus by which we can test whether our law enforcement practices "are keeping abreast of our consciences"; aspects of fairness in criminal procedures, particularly the right to counsel, the use of confessions, and searches and seizures; freedom of speech in relation to licensing, the hostile audience, labor union picketing, and communists; the freedom to remain silent in regard to beliefs or disbeliefs; the right against self-incrimination; Congressional investigations; freedom of movement, particularly the right of aliens to enter and of citizens to leave the country; school desegregation; and, in a final brilliant chapter, "private government" and the Constitution. The author offers no explanation for excluding freedom of religion and problems related to separation of church and state. The protections against double jeopardy, bills of attainder, and ex post facto laws are similarly untreated, although recent developments warrant consideration as to whether their meanings deserve judicial reinterpretation. Racial equality under the law is barely recognized as a topic, but for school segregation, and little consideration is given to the increasingly pressing problem of federal protection and enforcement of civil rights. But Professor Gellhorn speaks penetratingly and with eloquence on the topics to which he addresses himself.

The crown long held by the late Zechariah Chafee, Jr. as the nation's foremost champion of civil liberties among legal

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scholars has passed to Walter Gellhorn. Author of *Security, Loyalty, and Science* (1950), *The States and Subversion* (1952), and *Individual Freedom and Governmental Restraints* (1956), he has now written a magisterial survey of the constitutional law of civil liberties. If the book has any defects they derive from a brevity which permits only a tantalizing exposure to its author's luminous mind and style, while depriving us of his thinking on several issues that are inexplicably passed over or slighted.

LEONARD W. LEVY

BRANDEIS UNIVERSITY

*The Costs of Democracy.* By ALEXANDER HEARD. Chapel Hill, The University of North Carolina Press, 1960.—xxv, 493 pp. $6.00.

Those who waited with impatience and kept asking Alexander Heard when he was going to finish his study of money in politics can now appreciate why the job took so long and can be glad he took the time to be so complete and searching. For he has not taken the relative narrowness of the subject as license to constrict his examining lens; he has on the contrary taken the raising and spending of political money as the beginning place for a penetrating examination of the broadest implications of the effects of money upon our politics. Not content to learn who gave what to whom, he also wants to know why, how and with what consequences for the donor, the recipient, and the political system itself.

None of these questions can be answered easily, and this book does not resolve them all by any means. Finding answers here is difficult for all the reasons that prevail in the social sciences generally plus special reasons that pertain to campaign finances: the incompleteness of the information, the secrecy that usually surrounds the matter (in part as a result of unrealistic laws on the subject which are regularly flouted since no one is ready to blow the whistle on such infractions). Yet Heard has surely had access to more data on the subject than any predecessor ever saw. As a consultant to the Senate Subcommittee on Privileges and Elections he was granted freedom to use their files (to which he had himself contributed much), he had the assistance of a number of political scientists who contributed information about state and local political finances, and finally he has been relentless in tracking down not only statistics but information on the application of laws on political contributions both in this country and abroad. (His thoroughness extends even to his footnotes.

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There are few books that even come close to justifying Harold Laski's remark to Mr. Justice Holmes that he no longer read books but just their footnotes, but if Laski were still alive he would have been amply rewarded by the non-pedantic, valuable book-within-a-book at the bottom of these pages.)

Some widely held beliefs about money in politics are challenged here with sufficient evidence and persuasive argument to make it mandatory for commentators on the subject either to accept his propositions or refute them. For example, a political scientist recently said that the parties get their money in large gifts and really do not want it otherwise—". . . a cascade of two-dollar checks on the national committees," he said, "would be almost too much trouble to cash and spend." Heard's discussion of recent efforts to get money in small sums completely controverts this mistaken notion. Other cherished notions are challenged too. Democrats who bemoan the difficulties they have in collecting money in comparison with the Republicans will be interested in the evidence here that a major reason for this difficulty is the ineptness with which the Democrats approach this task. He discusses the rôle of the middleman in the collection of funds and contends that the middleman who brings in huge sums because he knows the right people may pose a more serious problem in many instances than do direct gifts from "fat cats." Also surprisingly, he concludes that the "real costs of campaigning have *not* soared steadily upward," that American attempts at control of party financing "have *not* been futile," and that Great Britain has not achieved "satisfactory legal regulation" of campaign funds at least by American standards.

Abraham Lincoln once said that "If we could know first where we are, and whither we are tending, we could better judge what to do, and how to do it." With a felicity of style, an abundance of evidence, and much cogent argument Professor Heard goes a long way toward supplying us with a good, if necessarily incomplete, assessment of where we are and whither we are tending. His judgment on "what to do" is first of all that controls should be realistic, should not impose limits that are invitations to evasion. Consistently with the goals of a democratic society he argues further for subsidies to parties and candidates, tax incentives and community drives to encourage widespread contributions. Such programs might indeed, as he says, "reduce the pressures that currently impair public debate, distort the recruitment of political leadership, and obstruct development of greater vision and common sense in the convention of politics."

DUANE LOCKARD

CONNECTICUT COLLEGE

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*The Presidency: Crisis and Regeneration.* By HERMAN FINER. Chicago, The University of Chicago Press, 1960.—xi, 374 pp. $6.95.

*Powers of the President During Crises.* By J. MALCOLM SMITH and CORNELIUS P. COTTER. Washington, D. C., Public Affairs Press, 1960.—viii, 184 pp. $5.00.

Professor Finer's thesis is that the American President has always carried a crushing burden but that today the proliferation and intensification of national and international problems have made that burden impossible for a single individual. More "institutionalization" and more responsible parties (not improbable, in the author's view) would help; but these, even if adequately developed, would not go to the heart of the matter, for a single individual, the President, would still bear the travail of making the final decisions.

Professor Finer proposes an American Cabinet system, in which the President and eleven Vice-Presidents would be elected on the same ticket for four years without limitation on their continued eligibility for re-election. The party tickets would be nominated by party conventions, without any prior instructions from primaries, "those internal subverters of parties." Candidates would have to be members of Congress or would have to have served at least four years in the House or the Senate. The President and the Vice-Presidents would sit in the House, and the Senate would be reduced in power and prestige. There would be collective resignation at the will of the Cabinet accompanied by automatic dissolution.

Even those who reject Professor Finer's solution as unrealistic cannot wave aside the urgency of the problem he raises, for he has accumulated a massive array of evidence to prove that the President is today perilously overtaxed. However, even he neglects to exploit to the full some of the new trends which are adding to the burden of the Presidential candidate and the President: the laborious building of an extensive personal pre-convention organization to win mass support, the primaries, and the opinion polls; the increasing tendency for the Presidential nominee to monopolize the spotlight during the election campaign itself and to dwarf all the other party leaders; the growing necessity for the President to appoint to decision-making offices tech-

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nicians and braintrusters rather than party politicians, thus making even more difficult the President's relations with party leaders and Congress.

In a number of ways, Professor Finer's book is a valuable contribution to our literature on the American Presidency; and it makes insightful and mature observations on the nature of power, on the ruthlessness of American politicians, on the necessary qualities for high political leadership, on the inadequacy of Bentley's group theory, and on a host of other basic elements in politics.

*Powers of the President During Crises* produces additional evidence of the stupendous burden under which the President today labors. The authors point out that emergency government has become the norm of twentieth-century constitutional states. However, they also show that it is highly misleading to speak of "emergency dictatorship," for emergency government is none the less constitutional government. "The suggestion that democracies surrender the control of government to an authoritarian ruler in time of grave danger to the nation is not based upon sound constitutional theory, or the experience of Great Britain or of the United States in this century."

This book makes a notable contribution, long over-due, to an understanding of the nature and scope of emergency powers in the American government of today. The authors survey the emergency powers, now in the arsenal of the federal government, over persons, property, and communications. When thus catalogued and analyzed, these are seen to cover an amazingly wide gamut of human activity. Even more impressive are the variety and ingenuity of the constitutional restraints—legislative, interagency, and judicial—which have been placed upon the exercise of these emergency powers. With respect to judicial review, the authors wisely observe that in the context of emergency, the Court can usually best preserve for the judicial system a meaningful rôle in preserving constitutional processes if it measures the consistency of executive action with executive standards and congressional grants of power rather than rhetorically admonishing the Congress or the President that the measures employed for the protection of the nation are unconstitutional.

WILLIAM G. CARLETON

THE UNIVERSITY OF FLORIDA

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*Communism in American Politics*, by DAVID J. SAPOSS. Washington, D.C., Public Affairs Press, 1960.—viii, pp. 229. $5.00.

Nature abhors a vacuum and Americans abhor doctrinaires and ideologues as the record of the Communist party in the United States serves to demonstrate. Not even during the worst days of the great depression did the candidates of the Communist party muster more than a corporal's guard of votes beyond a tiny hard core of card-carrying members. Dogged by failure and futility, the party from time to time abandoned its own identity and went underground. Instead of openly sponsoring its own program and its own candidates in democratic competition with other political parties, the party sought to influence, infiltrate and control other more traditional parties and groups. Labor unions, coöperatives, pacifist organizations, professional associations of all kinds, and, among political parties, the Democratic, Farmer-Labor, Liberal, Progressive and American Labor parties, have been the major objects of these tactics.

When existing organizations proved impervious to communist penetration, new organizations were created under names honored and respected in the American democratic tradition. Committees of Arts and Sciences, Civil Liberties Defense Committees, Trade Union Leagues and many others appeared, speaking the language of American liberalism but serving the ends of the Communist party. The same organizations and the same policies which at one time were characterized contemptuously as representing black reaction and "social fascism" were, at other times, hailed as friendly allies in a "United Front" against war and fascism. All of which was most confusing to the innocent liberals caught up in these cross currents of contradiction and conspiracy. Many of them knowingly or innocently joined with Communist party members and functionaries (the Communist name for leaders) because "after all they're going my way." Unfortunately the Communists, although moving on the same road, had a different destination in mind, and were quite ready to betray and waylay their fellow travellers at the next turn in the party line.

For whatever American goals the Communist party USA may from time to time have avowed, its ultimate destination and the final source of its discipline and doctrine was Moscow. Only if one keeps this in mind is it possible to understand the abrupt changes in tactics and policy of American Communists who could move overnight from contempt for liberals to coöperation with them or from isolationism to interventionism and back again.

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Even after the traumatic experiences of Stalin's death and the bitter revelations of Khrushchev at the 20th Communist Congress, even after Korea and Hungary, the Kremlin remained the fixed star in the political firmament of the Communist party USA.

To be sure, at the 16th Convention in 1957, the Party made public confession of doctrinal errors and tactical blunders. "The Party's judgment" in the past, said the main political resolution adopted at the Convention, had been based on an inadequate "analysis of the specific features of American capitalism . . . [and] one-sided and incomplete study of economic data, applying Marxian theory of economic crises in a routine, formal, and doctrinaire manner." Its attitude on the Negro problem had been "conditioned by a narrow and sectarian conception. . . ." Its "electoral tactics [had] contributed heavily to its isolation from the trade-union movement and the broad masses of peace-loving and democratic-minded Americans." The Convention denounced "doctrinaire forms of party organization [and] bureaucratic methods of leadership." It "discarded as obsolete Lenin's thesis that war is inevitable under imperialism . . . [and] the alleged law of the inevitable violent proletarian revolution." And it proclaimed its own independence in the formulation of policy. The CPUSA, said the resolution, "is not subject to any external allegiance or discipline. . . ."

Yet even these brave words were Kremlin inspired, to support Moscow's new line of "peaceful co-existence," and perhaps to fortify the party's case, then pending, before the Subversive Activities Control Board. Significantly the attorneys in that case argued that the CPUSA "and the Communist parties of other countries have repudiated . . . their uncritical acceptance of certain views and acts of the Government and the Communist Party of the Soviet Union." This striking admission of past subservience and claim of present independence would be more persuasive if it were accompanied by any sign of criticism of or opposition to the policies and tactics of the Soviet Union. One looks and listens in vain for any suggestion that the Soviet conquest of Czechoslovakia or Poland was wrong or that the brutal suppression of the Hungarian revolt was anything but a legitimate police action by Russian troops at the "request of the legitimate Government of Hungary." The fact is, as author Saposs and other independent observers have said, "the convention showed no break with the Soviet Union, that it was still acting on its orders, and that it used Aesopian language in order to conceal its true motives and deceive the public."

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In spite of its title, this work makes no pretense of being a definitive treatise on *Communism in American Politics*. The author traces the policies and tactics of the CPUSA from its beginnings following World War I to its efforts of rehabilitation and resurgence following the collapse of the so-called Progressive party after 1952 when it was revealed as a compliant tool of the Communists. How this tiny (membership probably at no time exceeded 50,000) but highly disciplined group of ideologues managed to infiltrate, influence, and at times even control other organizations and parties is set forth in considerable detail. Special attention is focused on California, Washington, Minnesota and New York, and the Democratic party, the Washington Commonwealth Federation, the Farmer-Labor Alliance, and the American Labor party, in these states. Nearly half of the book—eight of twenty chapters—is devoted to an account of the Progressive party and the political disillusionment of Henry Wallace. One can only hope that the taint of Communist control has not forever been attached to the Progressive party label, an honored name in American political history.

No serious student of American politics can afford to neglect this book. One might wish that the author had not relied so heavily and so confidently on the hearings of state and federal Committees on Un-American Activities. The testimony of renegade Communists is not the most trustworthy in the world, and by relying on material of this kind some injustice is done, not only to the Democratic parties of California and Washington, but to individuals in these and other states. The wonder is not that Communist ideologues were able in a number of places to exert considerable influence during the dark days of the great depression but that their influence was on the whole so transient and trivial. In the conflict for control of both major and minor parties, as well as for control of trade unions, and other liberal groups, organization will triumph over ideology, especially an ideology that has so little relevance to the basic values and experience of the American people.

PETER H. ODEGARD

UNIVERSITY OF CALIFORNIA, BERKELEY

*The Conscience of the Revolution: Communist Opposition in Soviet Russia*. By ROBERT VINCENT DANIELS. Cambridge, Harvard University Press, 1960.—xi, 524 pp. $10.00.

Professor Daniels, of the University of Vermont, addresses himself to a phenomenon as striking as it seems puzzling at first

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sight—the existence of various opposition groups and factions inside the Bolshevik movement, not only before its seizure of power but for more than a decade thereafter. His volume is the most thorough and thoughtful study of this question. The product of years of meticulous research, it is a comprehensive, conscientious and competent book.

Against the general background of the Bolshevik movement and the crises of 1917, the author analyzes one by one the controversies around the Treaty of Brest-Litovsk, the struggle over centralization of power during the Civil War, the fight over the rôle of the trade unions, the crisis of 1921 and the shift to the N.E.P. Quite naturally the major part of the book deals with the complex struggle and shifting alignments among Lenin's successors and Stalin's rivals. A concluding part sketches in the ultimate fate of the protagonists and their ideas. Factual errors are few (speculation about Karl Radek's wartime activities is pointless in view of the recent Soviet admission that he died in 1939), and while specialists in esoteric pamphlet literature and emigré journals will no doubt find lacunae in Mr. Daniels' researches, his coverage is impressive indeed. This is true especially for the "left," which gets considerably more attention than does the "right"—except in the conclusions, where the author (a bit hastily) finds that the rightist opposition is the "characteristic form of political dissent within fully consolidated Communist regimes" (p. 385).

One intriguing facet of Professor Daniels' analysis is his conceptual separation of "left-right" political cleavages ("program") from "hard-soft" variations ("method"). Conceiving of these as two substantially independent variables, he graphically illustrates different alignments within the Bolshevik movement in a series of charts, using these two measures as axes on which to plot a given position. This type of "field analysis" has genuine interest, but to this reader the assumptions underlying the concepts require elaboration.

Probably the most controversial aspect of Professor Daniels' book will be his ambitious conclusions, in which he seeks to explain "why the Opposition failed." (His use there of "the Opposition" as a unitary phenomenon runs counter to his correct earlier account; indeed, he recognizes that the very heterogeneity of the various elements that made up the Opposition was a major cause of their defeat.) Perhaps it is too simple to label the opposition leaders as impractical and irresolute intellectuals,

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for had not men like Trotsky and Bukharin succeeded in 1917-1921? More crucial was the inherent impossibility of organized, systematic opposition in a Bolshevik milieu. The opponents of the "machine" invariably drew back from forming separate "parties" yet found no room for themselves within the ruling one. Mr. Daniels persuasively argues that Leninism meant unity and discipline: it made opposition within the party illegitimate and opposition outside the party "a fruitless anomaly." Indeed, with but few exceptions, those who later strove for a forum and a "legal" base for their own views had earlier backed the use of terror against other opposition elements. Moreover, its Bolshevik preconceptions often kept the opposition from articulating its own position and from appealing for broad popular support.

Mr. Daniels seeks to argue that Leninism amounted to an abandonment of Marxism. Unfortunately this familiar proposition is not given the sort of proof one would require to accept it; a more persuasive case could be based on the fact that Leninism had to deal with problems and situations that Marx had not dealt with. As it stands, the proposition leads the author to accept such facile labels as "Thermidorean reaction" for 1921 and "Bonapartist" for Stalinism after 1928—misleading terms inappropriate to the events he seeks to describe. Similarly, the close similarities he discovers between Menshevism and the Opposition surely do not apply to the gradualism of the former and the intransigence of at least the major spokesmen of the latter; they are appropriate with regard to the greater acceptance of Western values and the continued maintenance of scruples, which they shared. This is what permits Professor Daniels to describe the Opposition collectively as the "conscience of the revolution." While it involves a substantial amount of oversimplification, the distillation of Leninism and Opposition as the struggle of "revolutionary pragmatism" with "revolutionary idealism" provides a useful thread for at least the "left." Yet no single or simple label will do, as Mr. Daniels' own account admirably shows.

This reviewer would also have welcomed a closer analysis of the way in which a party destined to become totalitarian (Stalinism is, quite properly, made a logical and legitimate heir of Lenin) could or would tolerate oppositions for so long, and why such weight is given to the Civil War as crucial in making the Bolsheviks the masters of political dictatorship.

Such differences of view are both healthy and natural. If this reviewer has given them some space here, it is because the book,

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in addition to its solid factual base, provides genuine stimulation and ample food for thought.

ALEXANDER DALLIN

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*Two Treatises of Government.* By JOHN LOCKE. A Critical Edition with an Introduction and Apparatus Criticus by PETER LASLETT. Cambridge, at the University Press; New York, Cambridge University Press, 1960.—xiii, 521 pp. $9.50.

This is an edition to end all editions: Mr. Laslett has collated the texts by the most highly sophisticated modern bibliographical techniques; he has drawn upon his own large historical knowledge of the period to interpret the documents; and he has made himself master of the voluminous manuscript material relating to Locke, from which he has perceived and extracted the relevant, large or small, to his subject. This is properly a definitive edition, and only the discovery of the manuscript, or drafts of the manuscript, of the *Two Treatises* could justify another edition. Since Mr. Laslett, whose heuristic talents in manuscript-finding are pretty extra-sensory, has not turned it up, we shall probably wait in vain for that treasure. In short, this book has the virtues both of breadth and detail, general vision and scholarly precision.

Since the Lovelace Collection (of which Mr. Long's catalogue is now happily available) came into Bodley, busy bees have been about Locke. Mr. Laslett is one of the most knowledgeable of men about Locke manuscripts, there and elsewhere, and has already made contributions in print, in propaganda, and in friendship to the semi-coöperative study of the "new" Locke. The new Locke is in many ways unlike the old, or pre-Lovelace, Locke; he has more personality (if one more person reveals to me that Locke was secretive, or niggardly, or cowardly, I think I shall explode) than he used to have, or rather, he has now a strong, narrow personality that can be shown to be important in his work. He has on the one hand come to seem a solider philosophical figure than he used to be, preoccupied from late youth with the ideas he made public in his late middle age, and on the other a far more worldly person, even a public personality. The scientific Locke has come into being, too, and the importance of medicine to his life and thought is somewhat clearer now than before. But the new Locke is still evolving, in the capable hands of Mr. Laslett, Dr. de Beer, and others; we do not yet know the man whole, either as historical personage or as philosopher.

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The good work being done on Locke falls roughly into two groups: philosophical analysis and interpretation, of which Dr. von Leyden's edition of Locke's *Essays on the Law of Nature* is the most important example; and historical consideration and interpretation, of which this book is the model. Mr. Laslett is an historian, whose own major contributions to our understanding of Locke have been historical. His principal find, now some years in print, is that Locke did not write this work as a justification of the Glorious Revolution, but as an exclusionist tract at the time of the furore over the Duke of York in 1681. One might argue, with historical hindsight, that since the Glorious Revolution was the empirical justification for the exclusion crisis, the *Two Treatises* are in that sense justification for the revolution, even if their precise origins lay elsewhere. And one would be right, of course: *sub specie aeternitatis,* Locke's contribution, like that of any other thinker, does not depend on precisely how or why or when he made it. But we are not quite ready yet to regard Locke *sub illa specie,* and we will not be so prepared until work of the kind Mr. Laslett has done here can ground us for more lasting generalizations.

Mr. Laslett always considers any point in the *Two Treatises* in relation to the personal and historical situation in which Locke found himself. He examines the books that went into the early stages of the work, the vicissitudes of Lord Ashley's politics, and the background of ideas from which Locke generally drew or against which he argued. As a result, he is able, among much else, to marshall the arguments against interpreting Locke's doctrine of property as "the spirit of capitalism," to present his own view that empirical medicine was the model for Locke's commentary on political matters; to interpret the relation of patriarchalism to Locke's whole argument. (Mr. Laslett is the editor of Filmer's *Patriarcha* and the author of an interpretation of seventeenth-century English society in which patriarchalism plays the major part. Locke's views of patriarchalism demonstrate, I think, two things, one of which Mr. Laslett does not discuss: the first, that of course patriarchalism was an important idea and an important social form in this period; the second, that however important in the structure of society the father is to his family, patriarchalism was no longer the dominant political form. Locke's argument is both a demonstration of its inappropriateness and an example of its obsolescence: that is, Locke was like most men the product of his time, and his antipatriarchalism had other analogues in the social life.)

Locke himself is an interesting combination of the accidental

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and the eternal. In their studies of the uses of political theory as historical propaganda, both Dr. Pocock and Mr. Salmon felt bound to remark that though Locke was deep in their subjects (the quarrel over the ancient constitution, and Huguenot theories of revolt), he made overt use of neither in the great political argument he propounded. This is typical of Locke—he was widely read in history, contemporary and earlier; he was deeply involved with contemporary political and philosophical issues; he knew well many men whose books are now more interesting to the historian than to the philosopher or political theorist; and yet for all this and for all his own scrupulous attempts to delineate the relativism of every man's personal and historical experience, Locke was not fundamentally interested in history. He was a philosopher, and he marched doggedly on the truth that he knew would always recede from him.

If there is something absent from Mr. Laslett's treatment, it is a natural preoccupation with philosophy. For example, though Mr. Laslett deals with many aspects of natural law, he does not tackle Locke's relation to the tradition as a whole, as someone must do before this subject is altogether dropped. The virtues of the historical approach are philosophical limitation: and if at this point one of the two, philosophy or history, must be sacrificed in studies of Locke, then a case can be made for holding back on philosophy until the historians have made their contributions to Locke studies. As an example of something insufficiently historical, and therefore plain wrong, I offer Richard Cox's recent *Locke on War and Peace* (Oxford, 1960), achieved by stirring the Lovelace papers with the longhandled spoon of preconception. Certainly Mr. Laslett has by no means ignored philosophy, either, in his own analysis of the *Two Treatises* or in his examination of their relation to the *Essay;* what he has done is masterfully to handle Locke according to the "plain historical method," in Locke's sense of that phrase and in our own. "Plain" was a praising word for Locke, but for Mr. Laslett's historical method it is insufficient, since he is an adept and a virtuoso.

ROSALIE L. COLIE

BARNARD COLLEGE

*The Calas Affair: Persecution, Toleration, and Heresy in Eighteenth-Century Toulouse.* By DAVID D. BIEN. Princeton, Princeton University Press, 1960.—xii, 199 pp. $4.00.

Law cases make exciting history, especially when they are mysterious. The Calas case has had its share of attention—

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perhaps, considering the sizable literature on it, more than its share. For Voltaire, who made the case famous, the execution of an obscure, elderly Huguenot merchant for the murder of his son was at first nothing more than a splendid opportunity to expose *l'infâme*, although he soon became convinced (let it be said to his credit) that Jean Calas' name must be rehabilitated because he was innocent, and that torture and other archaic legal techniques must be driven from France. For Toulouse, where the whole drama was played out in the winter of 1761-1762, it was a complicated affair: partly a reflection of ignorant fanaticism, partly a result of outmoded procedures, partly the fruit of inertia and curiosity, and partly a shocking surprise. Bien has penetrated this murky atmosphere in a deftly written and tightly argued book that manages to be, improbably enough, a fresh study of the Calas case.

The book opens with a thorough, cool account of the case itself, made all the more valuable by its detachment and its close scrutiny of the records. But the heart of Bien's concern is with clarifying the situation that allowed a respectable Huguenot to be accused of a heinous crime, and evidence pointing to the suicide of a moody young man to be disregarded. It has long been the accepted notion of liberal historians that the Catholics of Toulouse were congenital fanatics, and that the whole citizenry, from rabble to magistrate, was firmly convinced that Jean Calas had committed ritual murder to prevent his son from turning Catholic. Conservative or Catholic historians, tacitly accepting this logic, have defended Toulouse on the ground that Jean Calas was guilty as charged. Bien shows that the liberal view is too naïve, and the conservative view too parochial, to serve as the explanation of events.

In fact, there was widespread acceptance of Huguenots in the Toulouse of the 1750's. The mood of the city, Bien tells us, was "tolerance by indifference": old prohibitions against Protestants were falling into disuse as religious severity gradually eroded among Catholics. There were some restrictions, and some flare-ups, but for the most part hostility to Huguenots was latent. Bien shows in carefully documented and closely reasoned chapters that latent hostility was activated in the Calas case through a series of conjunctions: there was residual fear that Protestants were disloyal, a fear given some semblance of rationality in the midst of a long and frustrating war against Protestant powers; times were bad, local farmers unemployed, and prices high—always fertile ground for the irrational search for a scapegoat; several incidents involving pastors had awakened old suspicions.

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Thus, when Marc-Antoine Calas was found hanged in his father's shop on the evening of October 13, 1761, it was easy to conclude that he had been done to death by his family.

But even here Bien rightly urges caution: the circumstances surrounding the young man's death were peculiar enough to arouse the suspicions even of rational men free from bigotry; for a variety of reasons, the Calas family lied about the events of the day; the judicial system, based on Colbert's Criminal Ordinance of 1670, invited conviction and discouraged acquittal. Many of the citizens of Toulouse, therefore, including some of the judges, thought Jean Calas guilty without believing in the ritual-murder story for a moment. Voltaire's intervention, to which Bien devotes some judicious pages, was humane, courageous, and immensely beneficial, but some of his arguments were irrelevant, and his version of the case, far from clarifying, obscured it for historians.

It would be a pity if so impressive a study would find readers only among specialists in eighteenth-century France. Its clarity, economy, fairness, and penetration should insure it a wider audience than that. Its masterly handling of the relation of ideas to events and pressures to action makes it a splendid contribution to social history, which is the New Frontier of our discipline.

PETER GAY

COLUMBIA UNIVERSITY

*Victorian Origins of the British Welfare State.* By DAVID ROBERTS. New Haven, Yale University Press, 1960.—xiii, 369 pp. $6.00.

At least since the days of Elizabeth I, English governments have taken some care of the gravest misfortunes of their poor. In this not very useful sense the welfare state has a history four centuries long. Naturally, the modern welfare state implies much more than the grudging grant of inadequate relief to a minority of those who need it. The modern welfare state implies for one thing a different judgment about the relative shares of the individual and the community in the creation of illness, unemployment, accident, and indigence. We tend today to blame the bulk of these misfortunes upon the imperfect functioning of a society so complex that its parts seldom mesh smoothly. Naturally too as the individual's responsibility for his own plight is seen to diminish, the community's obligation to succor his distresses has

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expanded. The modern welfare state can exist only in the presence of an economic surplus, substantial enough to benefit the many without impoverishing the few. It is an interesting question how late in the nineteenth century we must go before England possessed such a surplus. A welfare state demands also efficient fiscal mechanisms of income redistribution. Taxes must be collected and paid out to chosen categories of recipients. Essential to the welfare state, therefore, is a well-organized, central bureaucracy to formulate the rules, keep the records, and enforce the code.

Mr. Roberts' book is an attractively written, carefully organized study of the welfare administration in England between 1832 and 1854. It examines the administration of the factory acts, the New Poor Law, the Public Health Act, and a miscellany of prison, tithe, and church reforms. How much does it tell us of the origins of the new attitudes, new economic capacity, and the new public administration which in combination make possible the welfare state? Not as much as the title of the study appears to intimate. Without question men like Chadwick and Shaftesbury understood better than most of their contemporaries some of the necessities of the new cities, the new industrialism, and the new population. But their link with older attitudes is plainer than with more contemporary ones. David Roberts presents much interesting evidence of their insistence upon personal responsibility, their reluctance to protect adult males, their wish to change individuals rather than governmental rôles, and their reluctance to spend money. In combination, these beliefs testify to a very limited conception of the state's rôle in the protection of the individual on the part of those most dedicated at the time to such service.

It is difficult to discover very much connection between nineteenth and twentieth century administration of welfare legislation. What the inspectors did was tirelessly inspect and ceaselessly report. It does not denigrate the efforts of dedicated men like the Reverend John Allen, an active school inspector, and Leonard Horner, Marx's favorite factory inspector, to say that the acts they administered and the meager staff available to them frequently left them powerless against individual abuse and local obstinacy. There appears to be little resemblance either in doctrine or organization between the modern Ministry of Health and Chadwick's Board of Health, or between the Ministry of Labour and the factory act inspectors.

Even if Mr. Roberts' title raises expectations which fail of gratification, his study is extremely useful. It contains, *inter alia*,

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a vivid description of the remarkable men who served as Her Majesty's inspectors, an enlightening analysis of the quarrel between the central administrators and the proponents of local control, a concrete account of the daily work of the Boards, and a persuasive sketch of the way both the administrators and their opponents thought. This is a fine piece of administrative history which completely escapes the tedium which usually envelopes this essential but rather dry category of investigation.

ROBERT LEKACHMAN

BARNARD COLLEGE

*The Fall of Parnell, 1890-1891.* By F. S. L. LYONS, Toronto, University of Toronto Press, 1960.—ix, 362 pp. $6.50.

F. S. L. Lyons has written an excellent and fascinating book. By means of a series of penetrating and insightful questions, he has explored in a most complete way the formidable historiography of the Parnell issue. *The Fall of Parnell* is lucidly written and methodologically sound. The study covers the eleven months' period between the hearing of the O'Shea divorce case in November and the death of Parnell the following October. Professor Lyons skillfully analyzes both the hold of Parnell upon the Irish imagination and the broad issues of national policy which the crisis brought into the open. His study of the final months of Parnell's life depicts not only the crisis of a personality but also the crisis of a party, of the liberal-national movement and ultimately of Anglo-Irish relations.

In addition to the clash of personalities, this book is concerned with such fundamental problems as the rôle of the church in politics, the rival claims of constitutional agitation and physical force, the organization and conduct of a democratic Irish parliamentary party and its relations with governments, parties and public opinion in England. The author argues cogently that the O'Shea divorce case aggravated problems whose roots lay deep in Irish and English history. There were problems which confronted Parnell in one way or another from the start of his career. In his efforts to solve them, he had contrived with extraordinary skill to keep in equilibrium forces which previously had seemed hopelessly incompatible. To a certain extent Parnell by 1890 was the prisoner of his past decisions. In a sense his past successes had come to limit his political base of operations, and as the years progressed, this was so not only in his private life, but also in his leadership in Ireland and in his parliamentary maneuvers in Westminster.

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During the early 1880's, Parnell fastened upon a moderate constitutional approach as the best means of achieving his goals. He enhanced his power and prestige by placing himself at the head of a small disciplined group in the House of Commons and a popular movement in Ireland. This success shattered the left wing of the Irish nationalist movement and for a time secured the support of the Irish Roman Catholic hierarchy. The famous split of 1886 had the result of limiting Parnell's political maneuverability. No longer could he in actuality follow a path of independent opposition, for his rejection of the conservatives all too openly committed him to the liberals. Since home rule could only be obtained from the liberals, in effect the liberal alliance had become essential to the Irish parliamentary party.

The aftermath of the O'Shea divorce action and Parnell's Manifesto threatened the alliance between the English liberal party and the Irish parliamentary party. From this time on, Parnell ran into difficulty with both the radical wing of the Irish parliamentary party led by T. M. Healy and the English liberal party. Healy demanded that the liberal alliance must be maintained or else home rule was doomed: Parnell therefore must give up his leadership. The English liberals, in turn, refused negotiations with the Irish parliamentary party until the important question of Parnell's leadership was settled. When the Irish moderates, John Dillon and William O'Brien, were unable to bridge the gap on this issue, negotiations finally collapsed. The issue was ultimately decided upon by English opinion and Irish opinion in a series of by-elections, and in Ireland the position of the Irish Roman Catholic clergy became an important, if not determining, factor.

It is difficult to do justice to the subtlety and complexity of Professor Lyons' book in a short review. A few points perhaps should be underscored. His work once again indicates the importance of the Irish question as an object of study for students of both Irish and English history. It should also be emphasized that what Professor Lyons has so effectively done for the Parnell-Gladstone relationship remains to be done for O'Connell and Peel. And since the line between Irish and English politics is indeed a thin one, it would be well for the historian to realize that behind the clash of such personalities, as Gladstone and Parnell, Peel and O'Connell, are such deep and fundamental problems as 1) the rôle of the church in politics (in both Ireland and England), 2) the rival claims of constitutional agitation and physical force, 3) the organization and conduct of a democratic Irish parliamentary party and its relations with governments,

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parties and public opinion in England, and 4) the conflicting values, assumptions and beliefs of Irish and English cultural nationalism. The fact is that a definitive history has not been written of any single one of these items for the nineteenth century.

GILBERT A. CAHILL

STATE TEACHER'S COLLEGE
CORTLAND, NEW YORK

*Trade Unions and the Labour Party Since 1945.* By MARTIN HARRISON. Detroit, Wayne State University Press, 1960.—360 pp. $4.95.

Although generations of American and British doctoral candidates have been drawn to the Labour party as flies to honey, it is only recently that we have begun to get systematic studies of both the party's history and its dynamics. Harrison's volume is one of this genre: a detailed analysis of the relationship between the trade unions and the Labour party since 1945. As such it confirms, with considerable detail, much we knew in general, and at the same time shatters a number of "hoary" myths. It confirms, for example, our knowledge of the relatively casual and fundamentally unrepresentative way in which political decisions are made within the trade unions, and at the same time destroys forever the myth that the trade unions and the constituency parties have stood respectively for moderation and radicalism.

Harrison's detailed analysis of Party Conferences between 1945 and 1958 shows quite clearly (and other studies show the same for the 1930's) that in most cases the bulk of the trade union and constituency parties' votes were on the same sides of given issues, and that, even in cases where they were not, a substantial body of trade union votes could always be identified with a "left wing" position. In fact, as he points out, there have been numerous instances where trade unions have tended to be further "left" than the constituency parties.

The relatively unrepresentative quality of political decision-making within the trade unions is endemic to the nature of the trade union movement itself. The opportunity for political discussion within the branches is quite limited, the difficulties of "mandating" officials or of holding them responsible for decisions are all but insuperable, and the problem of providing creative and representative candidates, even in those constituencies where the trade unions wish to run their own candidates, raises all sorts of difficulties. The fact is that the trade unions'

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primary rôle as an industrial movement impedes effective political activity.

Even given all this, however, a continued close tie between the trade unions and the Labour party is indispensable to the success of the latter. The trade unions still provide the great bulk of party funds, as well as defining its ethos to a great extent. Without the trade unions the party would be impoverished, and trade unionists are still sufficiently attached to the idea of a trade union-based Labour party as to make withdrawal unlikely.

The detail in Harrison's book is quite impressive. Chapters on the financial relationship between the trade unions and the party are heavily documented and, while the chapters on political activity within the trade unions, or by trade unions, at Party Conferences tend to be somewhat anecdotal, the author has brought to bear almost all of the available information.

Perhaps the only criticism which one can level against an invaluable reference book is that it tends to be just that. While it is interlaced with a number of penetrating judgments it lacks any clear analytic focus. Its goal is primarily to describe as accurately and fully as possible a particular set of relationships. Unfortunately, however, the emphasis upon empirical description tends to give it a static quality. The current ferment within the trade unions and the party, and the relationship between this ferment and changes in British society or the composition or attitudes of party and trade union members, simply does not come through.

STANLEY ROTHMAN

SMITH COLLEGE

*Economic Consequences of the Size of Nations.* Proceedings of a Conference held by the International Economics Association. Edited by E. A. G. ROBINSON. New York, St. Martin's Press, 1960.—xxii, 447 pp. $10.00.

A contemporary consideration of significant issues first raised nearly two centuries ago by Adam Smith in *The Wealth of Nations* can be found in this volume which constitutes the proceedings of the 1957 Lisbon Conference of the International Economic Association, and is edited, with an introduction, by E. A. G. Robinson. The general conclusion emerging from the nineteen papers and accompanying debate (recorded by Douglas Hague) is that although size may be *a* factor which explains a nation's total and per capita wealth and income, its importance is probably not too great and is, moreover, extremely difficult to

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determine empirically. Size is, of course, a concept of many dimensions: the absolute number and productive efficiency of the population; the level, average, and distribution of income; the extent and availability of both domestic and foreign markets; and the extent and exploitation of natural resources and technology. While the dimension chosen depends upon the problem to be studied, it is worth noting that some teleological difficulties may arise because many of the aforementioned dimensions can themselves be economic consequences. If one were to choose the papers which best clarify theoretical issues, deal most effectively with the available empirical evidence, and focus most clearly on those factors *other* than size which are associated with relatively more impressive economic attainment, my choices would be the ones by Simon Kuznets, Solomon Fabricant, John Jewkes, and Corwin D. Edwards. Kuznets emphasizes the quality of people and social institutions working through the cohesive and adaptive advantages of smallness to help overcome the disadvantages of area, natural resources, numbers, and the insecurity associated with smallness. Edwards provides a sharp contrast and in some places direct opposition to Kuznets' analysis, with considerable attention devoted to organizational and social competitiveness. One is struck here by the importance of the value assumptions underlying economic performance; this is an area where much remains to be done. Fabricant, in dealing with the conceptual and empirical aspects of the size and efficiency of the American economy, places great stress upon competition and the division of labor as functions, in Adam Smith's sense, of the extent of the market and hence of size. Questions of competition and specialization are also dealt with effectively by Jewkes and Edwards, who, in addition, focus upon firms and industries, concluding that economies of large scale production are not widespread, and are therefore not uniquely associated with the size of a nation. A number of the other papers, chiefly those by Leduc and Weiller on size and stability, Robinson on size and administrative costs, Triffin on size and vulnerability to economic nationalism, Scitovsky on size and economic integration, and Verdoorn on the foreign trade effects of Benelux, can also be read with profit. The conference can certainly be judged a success, because in attempting to evaluate the importance of the size of a nation, much has been contributed to our knowledge of economic relationships and behavior, and the groundwork has been laid for additional future research in a most fascinating and worthwhile area.

ROBERT M. STERN

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*Defeated Leaders: the Political Fate of Caillaux, Jouvenel, and Tardieu.* By RUDOLPH BINION. New York, Columbia University Press, 1960.—viii, 425 pp. $7.50.

Sometimes a book is better than its subject. Mr. Binion's triptych falls into that rare category; for though it deals with men of rather secondary stature, it does so with remarkable insight and finesse. Its author combines a quite exceptional knowledge of modern French politics with a literary talent of the first order. At the end of the book, one emerges almost convinced that the political failure of these three "lost leaders" was a tragedy for the Third Republic.

Almost, but not quite. Mr. Binion knows his three protagonists well enough to avoid idealizing them, and he admits that their flaws of character or temperament contributed to their failure. Yet he admires them enough to conclude that the regime (and the nation) were primarily at fault. "Any tension between a regime and its vital elements," he declares, "argues first against the regime"; and he adds that "the French like their great men best in history books." Mr. Binion would undoubtedly be right if Caillaux, Jouvenel, and Tardieu were the only "vital elements" in France during their generation, and if the system really rejected all men of talent in favor of mediocrities. I am inclined to be skeptical on both counts. A case can be made for the contrary thesis that some of the Third Republic's successful leaders were just as able as Mr. Binion's tragic heroes; an even stronger case can be made for the thesis that all three of the "lost leaders" were primarily responsible for destroying themselves. Almost any political system regurgitates the men who refuse to adapt themselves to its exigencies, and who repudiate the maxim that politics is the art of the possible. Caillaux's vanity, Jouvenel's dilettantism, Tardieu's stubbornness and intellectual snobbery were traits that might easily have blocked their ambitions in other places than republican France. Indeed, it is not at all certain that men with such flaws of character would have provided effective leadership even if the system had been more tolerant of erratic or overbearing genius.

That Mr. Binion is a skillful literary craftsman is evident on every page of his book; he writes with a verve and sparkle that are rarely found in historical monographs (and almost never in published dissertations). The only possible criticism would be that his virtuosity sometimes leads him into excess. His fondness for epigram and paradox, his occasional tendency to slip into an elliptical and compressed style, sometimes give the text both the richness and the consistency of an excellent fruit cake. Mr.

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Binion's comment on Tardieu might also serve as a bit of self-criticism: "Here and there . . . , his erudition is so conspicuous as to obscure an argument, leaving his readers more sure of his having proved his point than of their having understood it."

With this first book, Mr. Binion undoubtedly leaps into the front rank of American specialists on modern France. It is an auspicious beginning to what ought to be a notable career.

GORDON WRIGHT

STANFORD UNIVERSITY

*Church and State in Italy, 1850-1950.* By A. C. JEMOLO. Translated by David Moore. Oxford, Basil Blackwell, 1960.—vii, 344 pp. 30 s.

This book is an admirable example of erudition, insight and judiciousness. In the main an abridged version of the author's *Chiesa e Stato in Italia negli ultimi cento anni,* which appeared in 1949, it retains many of the salient features of the larger and more comprehensive work. The principal divergence between the two lies in the distribution of emphasis. Unlike the original, the present volume is chiefly concerned with the twentieth century. Apropos of this, Jemolo explains that he has neglected the earlier part of the period in order to expatiate on "those aspects which have most bearing upon current political life." In proceeding to so focus his attention, he passes in review the crisis of the secular and liberal state; the ecclesiastical policy of the Fascist state, which might be described as "the confessionalism of veteran, unconverted Jacobins" or as "the clericalism of unbelievers"; the recent period, which is highlighted by the uninterrupted sway of the Christian Democrats, a confessional party. It should be noted, however, that despite their brevity, the introductory chapters are by no means of negligible value. Indeed, the swift survey of church-state relations in Italy from the Risorgimento to the close of the nineteenth century is extraordinarily suggestive and should prove a boon to anyone seeking to thread his way through this labyrinthine story.

Jemolo's analysis of twentieth-century developments brings out both the complexity and continuity of the subject he is treating. But whereas the pre-Fascist era and the post-1945 years are discussed primarily in terms of the conflict between rival parties, groups and forces, for obvious reasons a different approach is employed in the chapter on the Fascist period. This chapter is perhaps the strongest section of the book. The portrayal of

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Mussolini's attitude stands out as a model of acumen. The Duce's ingrained anticlericalism is tellingly juxtaposed with his intuitive realization that the Catholic church was one adversary he could not hope to intimidate or crush.

As for the position of the church vis-à-vis the Fascist regime, the author traces it with precision and fairness. While noting that Catholic condemnation of fascism was far less frequent and fiery than the concurrent condemnation of communism, Jemolo attempts to do justice to the ever-present problem of evaluating the immediate needs of the church in the light of its long-range interests. He likewise pays due heed to the rôle of socio-economic and personal factors in the determination of the main lines of ecclesiastical action. Thus, in his appraisal of the policy of Pius XI, he notes the influence exerted by that pontiff's conservative background and innate piety. The latter was actually so powerful that it "transcended all questions of doctrine, all considerations of expediency, not only political but disciplinary."

Because a better-informed and more perspicacious account is not available in any language, students of the history of church-state relations in Italy will find this book quite indispensable.

S. WILLIAM HALPERIN

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